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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC.,
Respondent.

BRIEF FOR PETITIONER

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THE PEOPLE OF PUERTO RICO,

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vs.

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BRIEF FOR PETITIONER

INTRODUCTION

This case presents the question of the power of the Legislature of Puerto Rico to provide for enforcing the so-called "500 acre law" of Congress for Puerto Rico by proceedings in the insular Supreme Court, and, specifically, of the validity of Puerto Rican Acts Nos. 33 and 47 of the Special Session of 1935 authorizing such proceedings.

The Supreme Court of Puerto Rico, in an original proceeding in that court, ordered mandamus to dissolve the respondent corporation, holding and using for agricultural purposes some 12,188 acres of land, in violation both of the 500 acre law and of its own articles of incorporation. The Circuit Court of Appeals for the First Circuit reversed [R. 329, 333; 106 F. (2d) 754], "but without prejudice to future proceedings under valid statutes, or in the federal courts based on a violation of Sec.

39 of the Organic Act, or Sec. 752, Title 48, U.S.C.". The decision of the Circuit Court of Appeals was by a divided court. The majority opinion was by JUDGE WILSON, concurred in by JUDGE MAHONEY (R. 315-329). JUDGE PETERS filed a dissenting opinion (R. 330-332).

This court granted certiorari (R. 334).

The judgment of the insular Supreme Court (R. 305-306) in favor of this Petitioner, ordered the forfeiture of the corporate charter and the dissolution and winding up of the business of the respondent Rubert Hermanos, Inc., a domestic agricultural corporation of Puerto Rico, with a statutory fine of $3,000, and costs including attorneys' fees. The judgment was based upon the court's finding that (R. 305):

> "1. * * * the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U. S. C., Title 48, sec. 752), of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres."

The *quo warranto* proceedings were begun by original complaint in the insular Supreme Court (R. 1-35) upon the authority of two statutes enacted at the Special Session of the Legislature of Puerto Rico in the year 1935, giving that Court original jurisdiction in such cases. They are Act No. 33, approved July 22, and Act No. 47, approved August 7, of that year. [*Appendix, infra*, pp. 78-80].

STATEMENT

As stated, this case primarily involves the power of the Legislature of Puerto Rico to provide for enforcing the so-called "500 acre law" by proceedings in the insular Supreme Court.

FIRST: The Congress, by Joint Resolution No. 23, May 1, 1900 (Appendix, *infra*, p. 69), provided that, in Puerto Rico:

> "Sec. 3. * * * No corporation shall * * * be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."

The restriction was emphasized and in effect re-enacted in the second paragraph of Section 39 of the present Organic Act for the Island, March 2, 1917 (Appendix, *infra*, p. 71).

SECOND: The insular Legislature ["Legislative Assembly" under the former "Foraker Act"] imported this restriction into its local Corporation Law of March 1, 1902, and into the revision of it, March 9, 1911 (Appendix, *infra*, pp. 74-78), by the *proviso* (Sec. 3, sub-par. 4):

> "*Provided, however*, That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred";

prescribed that the corporation's incidental powers shall be (Sec. 3, sub-par. 8)

> "subject to the restrictions and liabilities contained in this act and in the Civil Code and its articles of incorporation";

and (Sec. 4) that:

> "No corporation formed under this act shall be deemed to possess or shall exercise corporate powers

"except in accordance with the provisions of the preceding section";

and required (Secs. 6, 7) "articles of incorporation" to be filed, and to state *inter alia* (Sec. 7, sub-par. 4):

> "The object or objects for which the corporation is formed."

And by the insular *Quo Warranto* Law of March 1, 1902, Sections 2 and 6 (Appendix, *infra*, p. 72), it was made a ground for *quo warranto*, and for ouster from the corporate franchise, with fine and costs, that

> "any corporation • • • exercises rights not conferred by law".

THIRD: Disregard of this 500 acre law becomes notorious. In the present case, the insular Supreme Court finds from the census reports (Opinion, R. 294) that:

> "not less than 196,757 acres, or something more than 70 per cent of the total acreage planted to sugar cane, are owned or controlled by companies which in turn are controlled almost exclusively by absentee stockholders",

and that these facts

> "constitute the elements of the most intricate problem confronting the people of this Island".

FOURTH: In order to facilitate enforcement of the 500 acre law, the Legislature, at its Special Session in 1935, passed the two statutes, Acts Nos. 33 and 47 [Appendix, *infra*, pp. 78-80], vesting original jurisdiction in the Insular Supreme Court in such cases. These proceedings were brought under those statutes. Act No. 33 confers "exclusive original jurisdiction" in *quo warranto* proceedings in cases of "violations of the provisions of Sec-

tion 752, Title 48, United States Code" [which is the Joint Resolution No. 23 of May 1, 1900]. Act No. 47 amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902, so as to authorize original proceedings in the insular Supreme Court,

> "whenever any corporation, • • • exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes."

FIFTH: The present respondent corporation was organized in 1927 under the insular Corporation Law to "engage in agriculture in general" with usual broad powers as a cane growing and sugar manufacturing company, but with the express restriction in Section 4-(f) of its articles of incorporation (Complaint, "Exhibit A", R. 8):

> "*provided, however*, that the right of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States".

Nevertheless, the corporation (Complaint, Par. (d), R. 3; Amended Complaint, R. 45),

> "owns and controls at present in full ownership and has owned and controlled for some time, several estates in excess of 500 acres, which it applies to the planting, cultivation and harvesting of sugar cane",

aggregating some 12,188 acres (*ibid*, Par. (e): R. 3, 45).

SIXTH: It is alleged that this is done (Complaint, Par. (d), R. 3; Amended Complaint, R. 45),

> "notwithstanding the express prohibition contained in its articles of incorporation and besides in open

> violation of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752)",

and also (Par. (f); R. 3-4 and 45-46) in violation of the public policy of Puerto Rico.

The prayer of the complaint is (R. 4-5 and 46-47):

> "to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises."

The "Amended Complaint" (R. 44-47) was filed, with immaterial modifications, upon defendant's "Motion to Strike" certain allegations (R. 36-41).

SEVENTH: The corporation demurred to the amended complaint (R. 51-58), and also answered (R. 89-98) substantially admitting the allegations, but denying that they stated a cause of action, challenging the jurisdiction of the court, and also setting up that the insular government is estopped, "barred from cancelling the franchise of this corporation", because it has (R. 96-97)

> "tolerated, allowed and encouraged the development of the sugar industry during all these years until it has reached the present stage",

without

> "questioning the right of a sugar corporation to own and control more than five hundred acres, provided this was reasonably necessary in order to obtain the raw material for the purpose of manufacturing and producing sugar and to engage in the sugar industry; that the People of Puerto Rico collected and still collects taxes upon the property."

EIGHTH: No questions of fact are involved. At the hearing the corporation offered no evidence. At the close of the People's case, it moved for dismissal on substantially the same grounds stated in its demurrer and answer (R. 121-129). The insular Supreme Court overruled its motion to dismiss (R. 129); and afterwards, in a careful opinion (R. 285-304) decided the case in favor of the government, upheld the validity of the two statutes, Acts Nos. 33 and 47 vesting original jurisdiction in the court, overruled the corporation's defense of estoppel, and gave judgment of ouster from the corporate franchise, with a $2,000 fine and costs (R. 305).

As stated, the Circuit Court of Appeals reversed, by a divided court (R. 315-333).

QUESTIONS PRESENTED

The case thus presents, primarily, the important question of the power of the Legislature of Puerto Rico to carry into practical effect by insular statutes the purpose of the Congress to limit the land holdings of agricultural corporations in the Island to 500 acres.

The controversy centers chiefly about the validity of the two insular statutes under which these proceedings were instituted; together with a question of the sufficiency of the allegations of the complaint, and of whether the Circuit Court of Appeals should have reversed the decision of the Territorial Supreme Court upon such a question of local pleading or procedure. There is also the other question of whether the *quasi*-sovereign government of Puerto Rico can be deemed to be estopped from enforcing its statutes limiting the land-holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures, particularly where, as here, the insular statutes were enacted in order to carry Congressional statutes and the policy of the Congress into effect.

FIRST. **Is Act No. 33 of the Legislature of Puerto Rico, approved July 22, 1935,[1] a valid statute?** The Supreme Court of Puerto Rico considers it valid. The majority opinion of the Circuit Court of Appeals holds it "null and void", as an attempt, in effect, to "amend" or change the character of the federal law by adding penalties and providing for enforcement in the insular courts, or as attempting to change its character from one "*enacted for the only purpose of imposing limitations upon the legislative powers of the legislature*" (R. 322), to a law binding directly on the corporations themselves. Petitioner believes the statute valid.

SECOND. **Is Act No. 47 of the Legislature of Puerto Rico, approved August 7, 1935,[2] amending Sections 2 and 6 of the insular *Quo Warranto* Law of March 1, 1902, a valid statute?** The insular Supreme Court considers it valid. The majority of the Circuit Court of Appeals hold it invalid, for like reasons as Act No. 33, at least in so far as it confers original jurisdiction on the Supreme Court of Puerto Rico in *quo warranto* proceedings brought against a domestic corporation of the Island on the ground that it has exercised rights or performed acts or made contracts "in violation of the express provisions of the Organic Act of Puerto Rico"; and also express doubt [*but do not directly decide;* R. 328-329] as to whether the balance of the Act is valid, conferring original jurisdiction upon the insular Supreme Court in such *quo warranto* proceedings based upon *violations of local insular statutes*, "no reservation being made that if any part of the Act is invalid it shall not affect the remainder of the Act" (*Majority Opinion,*

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[1] Laws of 1935, Special Session, p. 418; *Appendix, infra*, pp. 78-79.

[2] Laws of 1935, Special Session, pp. 530-536; *Appendix, infra*, pp. 79-80.

R. 329). JUDGE PETERS considers the statute valid, at least insofar as it relates to violations of insular statutes. (*Dissenting Opinion*, R. 330-332). Petitioner believes it valid; and also believes that, in any event, so much of the Act is valid as confers upon the insular Supreme Court original jurisdiction in such *quo warranto* proceedings when *based upon violations of* INSULAR *statutes*, which is enough to sustain the jurisdiction in these proceedings.

THIRD. **Should the decision of the insular Supreme Court, treating the allegations of the complaint as sufficiently definite allegations of violations of insular statutes, have been disturbed by the Circuit Court of Appeals, or the insular court's judgment reversed, on such a question of local pleading and procedure, in view of the established rule of the respect to be accorded to a decision of a Territorial Supreme Court construing and applying local Territorial laws and rules of pleading and procedure?**

The complaint alleges facts from which the conclusion of violation of insular statutes necessarily follows; although perhaps not specifically alleging that legal conclusion, in so many words. The insular Supreme Court treated it as sufficient in this respect, and, in part, based its findings and judgment upon these allegations. The majority opinion of the Circuit Court of Appeals holds "the allegation is too indefinite to constitute a good charge in a proceeding on which to base a judgment of a forfeiture of valuable property and to impose heavy fines" (R. 329). JUDGE PETERS, to the contrary, says (*Dissenting Opinion*, R. 332):

> "It seems to me, however, in view of the fact that the field of possible violations by the land-holding agricultural corporations is confined to local laws, and that the allegations in the complaint, when put together, state facts and describe a situation which show a violation of such laws, that the judgment of the Supreme Court should not be reversed on what amounts to a question of pleading, where the issues are clear enough, in a proceeding which, after all,

does not differ essentially from any other suit aimed to settle a dispute between the parties".

Petitioner believes that JUDGE PETERS is right; that the allegations are sufficient in this respect, under the Code of Civil Procedure of Puerto Rico; and that, in any event, the judgment of the Territorial Supreme Court was not so "clearly erroneous" as to justify reversal on such a question of local pleading or procedure.

FOURTH. **Should the *quasi*-sovereign government of Puerto Rico be deemed to be estopped from enforcing its statutes limiting the land-holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures; particularly, where, as here, the insular statutes were enacted in order to carry Congressional statutes and the policy of the Congress into effect?**

The insular Supreme Court holds that the insular government cannot be estopped on any such ground (R. 301-304). The majority of the Circuit Court of Appeals, to the contrary, hold (R. 328) that the insular government "should not be permitted to forfeit land[3] for past violations which it has winked at and condoned". JUDGE PETERS' dissenting opinion (R. 330-332) does not specifically deal with this question. Petitioner believes the insular Supreme Court right; that the government cannot be thus estopped; and that the majority judges of the Circuit Court of Appeals were perhaps led into error by failing to notice that no land forfeiture is involved in this case at all; that none was asked in the complaint, and none adjudged by the insular court; and that there is here

[3] Although there is no prayer "to forfeit land" anywhere in the complaint (R. 2-5, 46-47), nor any land forfeiture adjudged by the insular court (*Judgment*, R. 305). Nothing of that kind at all. The only "forfeiture" sought or adjudged is simply of the corporate franchise,—of its license to be a corporation.

a case of present continuing violations,—not simply of "past violations".

OPINIONS OF THE CIRCUIT COURT OF APPEALS

The principal grounds of the majority decision, as well as those of JUDGE PETERS' dissent, are indicated under the headings "Questions Presented" (*ante*, pp. 7-11), and "Petitioner's Position" (*infra*, pp. 11-16).

OPINION OF THE INSULAR SUPREME COURT

The opinion of the Supreme Court of Puerto Rico, delivered by MR. JUSTICE TRAVIESO on July 30, 1938 [53 P.R. Dec. 779; *Spanish edition*], is on pages 285 to 304 of the record.

STATUTES

The pertinent provisions of the two insular statutes whose validity is here directly involved, Acts Nos. 33 and 47 of the Legislature of Puerto Rico of the Special Session of 1935, are in the Appendix (*infra*, pp. 78-80).

Other pertinent Constitutional and statutory provisions, federal and insular, are likewise in the Appendix (*infra*, pp. 67-82).

PETITIONER'S POSITION

Petitioner believes the Supreme Court of Puerto Rico was right, substantially for the reasons stated in its opinion; that the majority judges of the Circuit Court of Appeals were wrong in reversing it; that the dissenting opinion of JUDGE PETERS is right in the main [except in so far as it indicates doubt of the validity of Act No. 33, and of any portion of Act No. 47, and except as it apparently treats the restrictions of the Congressional Joint Resolution and of Section 39 of the Organic Act as binding only on the Legislature, and not also directly on the corporations themselves]; that the judgment of the Circuit Court of Appeals should be reversed; and that of

the Supreme Court of Puerto Rico affirmed. Petitioner's position may be summarized as follows:

FIRST. Joint Resolution No. 23 of the Congress, May 1, 1900, restricting corporations engaged in agriculture in Puerto Rico to the ownership and control of not to exceed 500 acres of land, emphasized and in effect re-enacted by Section 39 of the present Organic Act of 1917, is an effective expression of the public policy of the United States; and, as an act of the Congress, the "supreme legislature" for the Territories, is a part of the domestic "supreme Law of the Land" of Puerto Rico, and likewise a part of the public policy of Puerto Rico. As such, it is a direct limitation, not only upon the legislative powers of the insular Legislature in chartering corporations or in making provision for their incorporation, but also upon the powers of the corporations themselves; and is directly applicable to them.

SECOND. Insular Acts Nos. 33 and 47 of the Special Session of the Legislature of 1935 are both valid. They were validly enacted by the Legislature in the exercise of the general local legislative powers with which the Congress had endowed it by the Organic Act. They were properly enacted for the purpose of carrying into effect the express direction of the Congress that no agricultural corporation in the Island should ever be "permitted" to hold or own real estate except such as might be reasonably necessary to carry out the purposes for which it was created, with the accompanying express restriction on its authorized purposes to the ownership and control of not to exceed 500 acres of land.

THIRD. The power of the Territorial Legislature as the delegate or agent of the Congress to enact local laws [not in conflict with any Congressional legislation] to supplement the Act of the Congress and to provide means for carrying the Congressional will into effect by

proceedings in the local insular courts, is clear. The contrary decision of the majority of the Circuit Court of Appeals is in conflict with the applicable decision of this Court in *People of Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, 260 *et seq.* Accordingly, these Acts Nos. 33 and 47 conferring original jurisdiction on the insular Supreme Court in *quo warranto* proceedings based upon violations of such Act of Congress, as well as upon,—or wholly upon,—violations of corresponding insular statutes, such as the local Corporation Act of 1902 as revised in 1911, and the local *quo warranto* Act of 1902, as amended by this Act No. 47 of 1935, are valid enactments of the Legislature.

FOURTH. Consequently, the insular Supreme Court had jurisdiction of this proceeding.

FIFTH. The provision of the local corporation act of Puerto Rico of 1902, both as it originally stood and as revised in 1911 and still in force (sub-paragraph 4 of Section 3), prescribing that the power of any agricultural corporation organized under that Act

> "to hold real estate shall be subject to the prohibition contained in Section 3 of the Joint Resolution of the Congress of the United States of May 1, 1900",

was a valid and effective *adoption by reference* of that provision of the Act of Congress *as a part of the local law of Puerto Rico*, "the details of which, instead of being recited, are adopted by reference" [*confer People of Puerto Rico* vs. *Shell Co.*, *supra*, 302 U. S. 253, 266]; as were likewise also the corresponding provisions of Section 2 of the *quo warranto* Act, as amended by this Act No. 47 of 1935, concerning acts of corporations "*in violation of the express provisions of the Organic Act of Puerto Rico*," and those of Act No. 33 concerning "*violations of the provisions of Section 752, Title 48, United States Code.*"

SIXTH. The Circuit Court of Appeals majority was in error: (1) In holding that the Supreme Court of Puerto Rico "is a statutory court and its jurisdiction is defined by statute", instead of a court of superior general jurisdiction, as in reality it is; (2) In considering the Joint Resolution of the Congress of May 1, 1900, together with the second paragraph of Section 39 of the present Organic Act, solely as limitations upon the legislative powers of the Legislature of Puerto Rico in chartering corporations, instead of, as those enactments of the Congress clearly are, parts of the body of the "supreme Law of the Land" in Puerto Rico, directly binding, not only upon the insular Legislature, but likewise equally upon all other branches of the insular government, and upon the corporations themselves, as well as upon all citizens of the Island; (3) In considering these Acts Nos. 33 and 47 enacted for the purpose of carrying the Congressional will and policy into effect, as attempts by the Legislature to "amend" the Acts of Congress, and therefore, as invalid; (4) In considering Section 256 of the Judicial Code of the United States [28 U. S. Code 371], relating to the delimitation of jurisdiction as between the courts of the United States, and the courts of the sovereign States of the Union, as a limitation upon the power of the Legislature of Puerto Rico in this respect [*over-looking the decisions of this Court* that all of the courts in the Island, alike the so-called "insular courts", as well also as the so-called "District Court of the United States for Puerto Rico", are in reality all simply Congressional courts, all alike instituted by the Organic Act (Secs. 40 and 41), and all alike, and equally, "courts of the United States", and none of them constitutional courts under Article III of the Constitution, — the so-called "federal" court any more than the so-called "insular" courts [*Romeu* vs. *Todd*, 206 U. S. 358, 368; *Balzac* vs. *Porto Rico*, 258 U.S. 298, 312; *Mookini* vs. *United States*,

303 U. S. 201, 205]; (5) In this connection in its reference to "a *forfeiture of the property* of a corporation", overlooking the fact that NO FORFEITURE OF THE PROPERTY of this corporation was asked in the complaint, or included in the judgment of the insular court in this case, other than of its franchise to be a corporation.

SEVENTH. Likewise it erred further: (6) In failing to hold that, in any event, so much of Act No. 47 is valid as vests the Supreme Court of Puerto Rico with original jurisdiction in *quo warranto* proceedings against a corporation, based upon its violation of *local insular statutes* [regardless of any question of the validity of that portion of the Act relating to cases charging violation of the Organic Act[4]], and is complete in itself, and can stand alone as an independent statute; and (7) In holding that the insular Supreme Court has not been vested with jurisdiction in cases of "an *ultra vires* act" of a corporation "in violation of its articles of incorporation", "or of a federal law".

EIGHTH: Likewise it erred: (8) In holding the allegations of the complaint in this case "too indefinite to constitute a good charge" of this corporation's violation of insular statutes [the insular corporation law and the insular *quo warranto* law]; and (9) In overruling the decision of the insular Territorial Supreme Court on this question of local law and local procedure [the local Supreme Court having treated the allegations as sufficient under the local Code of Civil Procedure]. The dissenting opinion of JUDGE PETERS was clearly right on this point. The majority opinion is in conflict with the applicable

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[4] And in this connection overlooked the rule as to the separability of statutes, established by the decisions of this court in *Champlin Refining Co.* vs. *Commission*, 286 U. S. 210, 234-235; *El Paso & N. E. Ry. Co.* vs. *Gutierrez*, 215 U. S. 87, 96-97; and earlier cases.

decisions of this court in *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511, and *Sancho Bonet, Treasurer* vs. *Texas Company*, No. 132, United States Law Week, January 2, 1940, pp. 37, 38, and the many earlier decisions there cited, as to the respect to be accorded to decisions of the local Territorial courts of last resort interpreting and applying local statutes and local rules of pleading and procedure.

NINTH: It is likewise in error and is in conflict with, or misinterprets and misapplies, the applicable decisions of this court in *Chicago etc. R.R. Co.* vs. *Iowa*, 94 U. S. 155, 162, and in *Louisville & Nashville R.R. Co.* vs. *United States*, 282 U. S. 740, 759, and is in conflict with the decisions of other Circuit Courts of Appeals, that of the Second Circuit in *Seeley* vs. *Helvering*, 77 F. (2d) 323, 324, and that of the Sixth Circuit in *Standard Oil Co.* vs. *Fitzgerald*, 86 F. (2d) 799, 802, as well as with the decisions of the courts of last resort of several of the States of the Union, in holding (R. 328) that the insular Government of Puerto Rico can be deemed estopped from enforcing its statutes limiting the land holding powers of its domestic agricultural corporations, because of delay or lack of action by former insular executive officials or former Legislatures; that the insular Government . .

> "should not be permitted to forfeit land for past violations which it has winked at and condoned";

and is further again in error in this connection in failing to notice that [as hereinbefore pointed out] there is no question of forfeiture of land involved in this case; that none was asked in the complaint, and none was adjudged.

TENTH: No *ex post facto* action is involved.

ELEVENTH: Acts Nos. 33 and 47 are amply sufficient in title and form under Section 34 of the Organic Act.

OPINIONS BELOW

The Opinion of the Supreme Court of Puerto Rico

(R. 285-304) is officially reported in 53 P. R. Dec. 779 (*Spanish edition, Advance Sheets*). It has not yet appeared in the English edition of the Puerto Rico Reports. The opinion of the Circuit Court of Appeals (*Majority opinion*, R. 315-329; *dissenting opinion of* JUDGE PETERS, R. 330-332) is reported in 106 F. (2d) 754 (*Advance Sheets*).

JURISDICTION

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered September 27, 1939 (R. 333).

The petition for certiorari, together with the supporting brief for the petitioner, and the transcript of the record, was filed in this court on December 11, 1939, within the time limited by the statute. Certiorari was granted on January 29, 1940 (R. 334).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Questions Presented" and "Petitioner's Position" (*ante*, pp. 7-11 and pp. 11-16).

SUMMARY OF ARGUMENT

The argument is summarized under the heading "Petitioner's Position" (*ante*, pp. 11-16), and in the "Subject-Index" (*ante*, pp. i-vi).

ARGUMENT

FIRST

ACT NO. 33 AND ACT NO. 47 OF THE SPECIAL SESSION OF 1935 OF THE LEGISLATURE OF PUERTO RICO ARE BOTH VALID STATUTES.

Point I.

The Legislature of Puerto Rico is vested by the Organic Act with "all local legislative powers", to "extend to all matters of a

legislative character not locally inapplicable", including power "to * * * * alter, amend, modify or repeal any and all laws and ordinances of every character now in force in Puerto Rico insofar as such alteration, amendment, modification or repeal may be consistent with the provisions of this Act" (Organic Act, Secs. 25 and 37; Appendix, *infra*, pp. 70-71), save only as restricted by other acts of the Congress.

Point II.

This comprehensive grant of "all local legislative powers" confers upon the legislature of Puerto Rico substantially all of the local legislative powers customarily exercised by the legislatures of the States. (*People of Puerto Rico* v. *Shell Company*, 302 U. S. 253, 260-261.)

> "These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, * * * the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; * * * **'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature'.** * * * This court, speaking of this typical general provision * * * said that, with the exceptions noted in the provision itself, **'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State'".** (*People of Puerto Rico* v. *Shell Co., supra*, 302 U. S., at pp. 260-261; *emphasis supplied*).

A. The Congressional grant of "all local legislative powers" extends to all "rightful subjects of legislation", the general scope of which is to be determined

> "by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represent" (*People of Puerto Rico* v. *Shell Co., supra*, at p. 261; citing and quoting *Maynard* v. *Hill*, 125 U. S. 190, 204).

Point III.

This broad grant by the Congress to the Puerto Rican Legislature of "all local legislative powers" is limited only by such explicit limitations as are expressed in the Organic Act itself or in other acts of the Congress.

A. *There is no implied limitation against legislation in the same field in which the Congress has chosen to legislate directly,* so long as the local insular legislation does not conflict with the legislation of the Congress.

This Court has expressly so held in the *Shell Company* case. The Court there said (*People of Puerto Rico* v. *Shell Co., supra,* 302 U. S. 253, 265):

> "3. In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act, and Sec. 32 of the Foraker Act. Nothing is expressed in these acts or, so far as we are advised, in any other federal act, which suggests a congressional intent to limit the exercise of the power of local legislation to those subjects in respect of which there is an absence of explicit legislation by Congress; and we find nothing in the nature of the power or in the consequences likely to ensue from the duplicate exercise of it, which requires an implication to that effect."

B. This rule is *equally applicable whether* the Congressional legislation in the same field be contained in *the Organic Act* itself [or in an act, such as the Joint Resolution No. 23 of the Congress of May 1, 1900 (Appendix, *infra,* p. 69), manifestly quite directly related to the Organic Act and intended, in effect, to operate as a part

of it], *or in some other act of the Congress* "not locally inapplicable" within the meaning of section 9 of the Organic Act (Appendix, *infra*, p. 70), and therefore having, as directed in that section, "the same force and effect in Puerto Rico as in the United States."

C. *There is no difference, as to their effect and operation in the Island, and their complete effectiveness there for all purposes, between provisions of the Organic Act and those contained in any other act of the Congress running to the Island.* All alike are enacted by the Congress, exercising "plenary" legislative power in the Territory (*El Paso & N. E. Ry. Co.* vs. *Gutierrez, supra*, 215 U. S. 87, 94-95, 97), in pursuance of its constitutional power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Const., Art. IV, Sec. 3, cl. 2); and, like every act of the Congress, wherever operative at all, they are all alike "Laws of the United States", and, as such, "the supreme Law of the Land" (Const., Art. VI, Cl. 2).

D. There is no express limitation against insular legislation supplementing or implementing acts of the Congress, enacting penalties, or providing remedies in the insular courts; and no such limitation is to be implied.

There is no suggestion of any such limitation being intended in the rule as it was laid down by this Court in the *Shell Company* case as above quoted. There is in that case an express finding (302 U. S. at p. 259), that the federal anti-trust acts extend to Puerto Rico and are in full force there. Nevertheless, it was there held (overruling the decisions both of the Circuit Court of Appeals and of the Supreme Court of Puerto Rico) that the manifest fact that the local anti-trust law enacted by the Legislature of Puerto Rico was legislation "in the same field", in which the Congress had itself di-

rectly legislated by the federal acts, did not invalidate the local Puerto Rican statute; *although that statute expressly provided remedies in the local insular courts for its violation in cases which would also constitute violations of the federal anti-trust statutes* [of violations of which the Congress had there expressly directed cognizance to be taken by the federal courts; Sherman Act, Sec. 4; Clayton Act, Secs. 4, 15, 16].

E. *The decision of this Court is broad and sweeping in this respect.* Under it, no distinction can be made as to whether the Congress, in choosing to legislate in this particular "field of legislation", has chosen to do so in the Organic Act or other closely related legislation, or in a separate act operative within Puerto Rico. All alike constitute Congressional legislation operative within the Island as "the supreme Law of the Land"; and, with relation to all alike, the rule declared by this Court is operative that (in the absence of express Congressional direction to the contrary) no implied limitation is intended by the Congress, by the mere fact that it has chosen itself to legislate in that same field, upon the broad and unlimited powers which by the Organic Act it has chosen to confer upon the insular Legislature, of "all local legislative powers" [so long, only, as the insular legislation *does not conflict* with any Act of Congress]. As MR. JUSTICE SUTHERLAND well phrased it in the opinion of this Court above quoted, and as quoted in the opinion of the insular Supreme Court in the present case (302 U. S. at p. 261; *quoted by the insular court*, R. 299):

> "The power being given without express limitation, a conclusion that the present exercise of the power is precluded by the existence of Section 3 of the Sherman Act" [*or by the existence of any federal act in the same field of legislation in question in any particular case, such as this Joint Resolution of May 1, 1900, with which we are here immediately concerned*] "must rest upon the assumption

that a congressional statute penalizing specific local behavior and a statute of Puerto Rico to the same effect cannot coexist. With due regard to the status of the territory, the character of its established government, the positive terms of the congressional grant of power, and the lack of conflict between the two acts, that assumption must be rejected."

F. This rule is, of course, equally applicable with relation to the provisions of section 3 of Joint Resolution No. 23 of the Congress, of May 1, 1900, limiting land tenure in the Island by corporations "authorized to engage in agriculture", "to the ownership and control of not to exceed 500 acres of land", as it is to the restrictive provisions of the federal anti-trust acts, the Sherman Act and the Clayton Act, which, under the decision of this Court in the *Shell Company* case, are operative in Puerto Rico [302 U. S., *supra*, at pp. 257-259] equally with the provisions of this Joint Resolution No. 23. Just as, with relation to the federal anti-trust acts operative in the Island, so also with relation to this Joint Resolution No. 23 likewise operative there, it is competent for the local legislature, in the exercise of the broad and unrestrictive grant of "all local legislative powers" conferred upon it by the Congress, to supplement, and to implement, the federal statutes by enacting suitable penalties and providing the procedural means for their enforcement, so long as the local legislation does not conflict with the federal legislation.

G. And so it may to that end "*adopt by reference*" the federal act, "the details of which, instead of being recited, are adopted by reference" [*People of Puerto Rico* vs. *Shell Co.*, *supra*, 302 U. S. at p. 266], and make it the basis of proceedings under its own local statutes, in its own insular courts. (*Confer*, *infra*, Point V.I, pp. 29-32.)

H. Of course, insofar as any local legislation might be found to be in direct conflict with federal legislation, the local legislation would have to fall; would be simply void, as in conflict with "the supreme Law of the Land", "the Laws of the United States", enacted by the Congress and operative in the Island.

I. But the fact that the local legislation provides remedies in the insular courts does not in itself constitute any conflict with the federal legislation.

This was expressly ruled in the *Shell Company* case, where it was said (302 U. S. *supra*, at pp. 262-263):

> "This comprehensive grant of legislative power by Congress plainly recognizes the great desirability of devolving upon the local government the responsibility of searching out local offenses and prosecuting them in the local tribunals. The insular Supreme Court in this case declared in emphatic terms the wisdom of such local control in respect of the matter dealt with by the act in question. Although striking down, with evident reluctance, the act as invalid, that court said: 'The right of the Insular Legislature and officers to prosecute and punish such monopolies as may be set up within our jurisdiction is really inestimable. It was so understood by our Legislature when it took upon itself to legislate on the subject. This is a wholesome and necessary legislation that should be enforced through the insular courts. It must be admitted that The People of Puerto Rico has a special interest in prosecuting before the courts those citizens who violate its own laws. No matter how interested the National Government may be in prosecuting such offenses, instances might occur where the latter would pass unnoticed by the federal officers, or where, for some reason or other, such officers might not display the same activity and interest that is to be expected from the local officials.'
>
> "3. In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of

> Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest." * * * * (*Confer, ante*, Point III-A, p. 19.)

J. A real "*conflict*" between the federal and the Territorial statutes, in the sense we are here considering, would involve some *conflict of duties* imposed upon the corporation by the two laws.

Neither this Court nor the Congress has ever intimated that it considered the mere implementing of the federal act by the insular statute as creating any "conflict" between them. "Conflict" in this sense has always been some substantial, substantive thing *relating to the rights or duties or liabilities of the citizen*. This Court has defined such a real "conflict", in its opinion in *Gulf, Colorado & Santa Fe Ry. Co.* vs. *Hefley*, 158 U. S. 98, 103:

> "The question is * * * *whether their enforcement may expose a party to a conflict of duty*. It is enough that the two statutes operating upon the same subject matter *prescribe different rules*. In such case one must yield, and that one is the State law." (*Italics supplied.*)

That is the test. It is not a procedural matter; but is one of substantive law: of the rights and duties and liabilities of the citizen.

K. It follows that this insular legislation does not amount to "amending" or attempting to "amend" the Act of Congress; and that the majority of the Circuit Court of Appeals were in error in thinking that it does (R. 321, 322 *et seq.*). The cases they cite do not bear out their opinion. [*Territory of Nebraska* vs. *Lockwood*, 3 Wall. 236; *Auk Bay Salmon Canning Co.* vs. *United States*, 300 Fed. 907; *Gallardo* vs. *Porto Rico Railway, Light & Power Co.* (C.C.A.-1), 18 F. (2d) 918; *People of Puerto Rico* vs. *Torres*, 28 P. R. Rep. 783]. So far as in

point here at all, those cases hold only that [*of course*] the Territorial legislature may not change or really "amend" any act of the Congress; and, hence, that any statute of the Territorial legislature actually *in conflict* with an act of Congress is ineffective and void, in so far as it is in conflict with the federal statute. No one disputes this.

L. The question in every case is simply whether or not the Territorial statute actually is in conflict with the act of Congress. In the present case there is no conflict. Under the rules established by this Court in *Gulf Colorado & Santa Fe Ry. Co.* vs. *Hefley*, above quoted, and in the *Shell Co.* case, *supra*, the fact that the local statute provides means for carrying the federal act into effect, in the local courts, does not constitute any conflict with the federal act. To the exact contrary, in the present case, the local statute was in reality, and very plainly, enacted in direct obedience to the Congressional will, and to carry the Congressional intent into effect.

Point IV

The Supreme Court of Puerto Rico is a "court of the United States."

A. The majority opinion of the Circuit Court of Appeals says (R. 325) that this insular Act No. 33, in conferring "jurisdiction to impose penalties for violations of federal laws upon insular courts", "violates the express provisions of federal laws"; and cites the provision of Section 256 of the Judicial Code (28 U. S. Code, 371) that:

> "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: * * *
>
> "Second:—Of all suits for penalties and forfeitures incurred under the laws of the United States."

B. *But that overlooks three things:*

FIRST. Section 256 of the Judicial Code constitutes a delimitation or demarkation of the line of jurisdiction between the *"courts of the United States"* on the one hand and the *"courts of the several States"* on the other hand; that is to say, between the courts instituted by the different sovereignties; the "courts of the United States" instituted under the sovereign power of the federal government, on the one hand; and, on the the other hand, the "courts of the several States" instituted by the several sovereign States of the Union under their inherent sovereign powers, wholly independently in this respect of the sovereign powers of the federal government.

That has nothing whatever to do with any delimitation, as among themselves, of the respective powers of the different courts instituted by the Congress within a Territory such as Puerto Rico, all of which alike derive their powers from the Congress, and all of which alike act by the authority of the same sovereignty, that of the federal government of the United States. *Grafton* vs. *United States*, 206 U. S. 333, 354-355; *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 264-266.

SECOND. The Congress has itself recently defined the term **"courts of the United States"** as including (Sec. 5, Act of August 24, 1937, 50 Stat. 751, 753):

> "the courts of record of Alaska, Hawaii, and **Puerto Rico**, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States".

While that definition of the term "courts of the United States" is prefaced, in Section 5 of the Act of August 24, 1937, with the phrase, "As used in this Act", yet it is, manifestly, *a correct definition of the term for all*

purposes. It includes all those courts of record which are instituted under the direct sovereignty of the federal government, alike in the continent and in the organized Territories of Alaska, Hawaii and Puerto Rico.

It appears to be directly applicable here, as indicating the sense in which the Congress used the same term, "courts of the United States", in Section 256 of the Judicial Code; and thus reinforces the intent manifest on the face of that section, as above pointed out, to use the term there, simply as in contradistinction to the term "courts of the several States," that is to say, the courts of the several sovereign States of the Union instituted under their independent sovereignties; and not at all with reference to any distinction between the different classes of "courts of the United States" instituted by the Congress within a Territory, such as Puerto Rico, as among themselves.

THIRD. **Within the meaning of this phrase** "courts of the United States", as used by the Congress both in Section 256 of the Judicial Code and also in Section 5 of the Act of August 24, 1937, **the insular courts of Puerto Rico, including the insular Supreme Court of Puerto Rico, are "courts of the United States",** just as much as is the so-called "District Court of the United States for Puerto Rico", and in exactly the same sense.

They are all alike instituted by the Congress, and by the same Act [the Organic Act for Puerto Rico of March 2, 1917, Secs. 40 and 41, continuing the analogous provisions of the earlier "Foraker Act", Secs. 33, 34]. This court has consistently held that the so-called "District Court of the United States for Puerto Rico" is not a constitutional court of the United States, but is only a Congressional court, in reality simply another type of insular court, instituted by the Congress, equally with the other insular courts, under Article IV, Sec. 3, clause 2 of the Constitution, giving the Congress power "to dis-

pose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". *Romeu* vs. *Todd*, 206 U. S. 358, 368; *Balzac* vs. *Porto Rico*, 258 U. S. 298, 312.[5] In the latter case this court said (at p. 312):

> "The resemblance of its jurisdiction to that of true United States courts in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court."

C. It follows, therefore that, since the insular Supreme Court of Puerto Rico is a "court of the United States" instituted under the direct sovereignty of the federal government, and is as much a "court of the United States" as is the so-called "federal court", the "District Court of the United States for Puerto Rico", or any other court sitting within the boundaries of the Territory, *the Legislature of Puerto Rico*, instituted by the same sovereignty and clothed by it with "all local legislative powers," *could validly vest that court with jurisdiction in cases of violation of these federal laws* named in these insular jurisdictional statutes, Acts Nos. 33 and 47 of 1935. [Even aside from the "adoption by reference" of the federal statute as a part of the local insular law; *Point VI, infra*, pp. 29-32].

Point V

In the present case it is clear that the Joint Resolution of the Congress No. 23, approved May 1, 1900, limiting to five hundred acres the amount of land in Puerto Rico which might be owned or controlled by a corporation engaged in agriculture, and requiring that limitation to be expressed in the articles of incorporation or charter of every such corporation, is an expression of the public policy of the United States, and of the intent of the Congress that it should become a fixed rule of property in the Island, and a part of the basic law of the land there.

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[5] And see likewise, as to Hawaii: *Mookini* vs. *United States*, 303 U. S. 201, 205.

And hence a fixed rule of public policy in the Island.

The insular Supreme Court made a study (R. 291-297) of the historical facts surrounding the enactment of the Joint Resolution No. 23 of the Congress, of May 1, 1900, and of its emphatic restatement in Section 39 of the present Organic Act of March 2, 1917; of the statements of Congressional leaders of both parties in the course of the debates leading up to the enactment of the "Foraker Act" of April 12, 1900 (c. 191, 31 Stat., 977) and of the Joint Resolution here in question, passed only eighteen days later, May 1, 1900; and of various acts of the Legislature of Puerto Rico and earlier decisions of the insular Supreme Court itself, and reports of the Governor, and of a report of the Secretary of the Interior of the United States, and also of various statistical data relating to the Island, all tending to indicate a general understanding over this whole period of time of the public policy embodied in the Congressional legislation, and that it was a part of the fixed public policy of Puerto Rico.

We particularly invite attention to this portion of the insular court's opinion.

Point VI

The Legislature of Puerto Rico possesses the power to adopt by reference a statute of the Congress as a part of the local statutes of Puerto Rico, without repeating the details of the federal statute at length.

A. *And contrary-wise,* as this court pointed out in the *Shell Company* case, *supra,* the Congress may, and not infrequently has, adopted by reference State or Territorial statutes as parts of the body of the federal statutory law, without reciting the details at length. This court, in the *Shell Co.* case, in construing and applying its earlier decision in the *Grafton* case [*Grafton* vs. *United States,* 206 U. S. 333], and in pointing out the applicability of the doctrine of that case to Puerto Rico, said (*Peo-*

ple of Puerto Rico vs. *Shell Co., supra*, 302 U. S. 253, 265-266):

> "An attempt is made to distinguish the *Grafton* case on the ground that but one statute was there involved—namely, the statute of the Philippine Islands—and that both the general court martial and the Philippine court undertook to enforce that statute. Obviously, that view is incorrect. The court-martial proceeding was not to enforce the Philippine legislation, but to enforce the 62nd Article of War; and that article was none the less a federal law, distinct from the local law, because it might be necessary to refer to the local law to determine whether the act charged against the soldier was embraced by the term 'crimes' in the 62nd Article. This is well illustrated by section 289 of the Criminal Code (18 U. S. C. Section 468), which, in respect of offenses committed upon places subject to the exclusive jurisdiction of the United States within the limits of a state or organized territory or district, makes applicable the laws of such state, territory or district in respect of such offenses. Prosecutions under that section, however, are not to enforce the laws of the state, territory or district, but to enforce the federal law, the details of which, instead of being recited, are adopted by reference. See *United States* v. *Press Publishing Co.*, 219 U. S. 1".

B. The 62nd Article of War [Rev. Stat., Sec. 1342, Art. 62; now reenacted, with some changes, as the 96th Article; Act of June 4, 1920, c. 227, subchapter II, section 1, 41 Stat., at p. 806; 10 U. S. Code 1568] read, as it stood at the date of the decision in the *Grafton case*, in 1907:

> "Art. 62. **All crimes** not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, **are to be taken cognizance of by a** general, or a regimental, garrison, or field-officers' **court-martial**, according to the nature and degree of

the offence, and punished at the discretion of such court." (*Emphasis supplied.*)

The words "*all crimes*" are the words that this Court held in the *Shell Co.* case, as above quoted, "*adopted by reference*" the laws of the various States and Territories in force when and wherever the offense might have been committed, of which the court-martial was called upon to take cognizance in any particular case.

C. As this court pointed out in the *Shell Co.* case, as above quoted (302 U. S. at pp. 265-266), as well as in *United States* v. *Press Publishing Co.*, 219 U. S. 1, 8, there cited, the Congress has similarly, by Section 289 of the Criminal Code, adopted by reference the varying laws of different States and Territories, without reciting them in detail, for application, *pro tanto*, as parts of the federal Criminal Code itself, within the respective federal reservations lying inside of the outer territorial boundaries of the several States and Territories.

D. Again, the Congress similarly, over a century ago, when making provision for the District of Columbia, adopted by reference the common law and rules of procedure of the State of Maryland, as then existing, for that portion of the District which had been ceded by that State; and similarly adopted the then existing laws and rules of procedure of the State of Virginia for that portion of the District ceded by that State; in each case without reciting the details at length. [Act of February 27, 1801, c. 15, 2 Stat. 103].

E. And so likewise the Congress, in the first Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900, set the example for the Legislature of Puerto Rico in this respect. In that Act, the Congress, as hereinafter more at length pointed out, (*infra*, Point IX, pp. 35-36), in defining the jurisdiction and prescribing the forms of procedure of all the various courts of the Island, did so by

merely *adopting by reference* the General Orders of the Military Governor of the Island, then in force, *without copying them out at all* (Sec. 33, "Foraker Act", Appendix, *infra*, pp. 67-68).

F. There appears to be no reason why the Legislature of Puerto Rico, in the exercise of the delegation to it by the Congress by Sections 25 and 37 of the Organic Act of "all local legislative powers", may not, in this respect, legislate in like manner as the Congress itself; or may not thus,—without having necessarily always to set out the details in full,—*adopt by reference*, and thereby make a part of its own statutory local law, any act of the Congress which is already of its own force in effect in the Island as a part of the body of the "supreme Law of the Land" there. [As every enactment of the Congress, applicable in the Island, necessarily is, under Article IV, Section 3, Clause 2, of the Constitution]. The Act of Congress being already in force in the Island, there would seem to be no reason why the Legislature should not simply refer to it and adopt it by reference as a part of its own statute, without necessarily reciting it in full, or formally reenacting it at length; just as the Congress itself does in adopting by reference existing statutes of the States and Territories.

G. Particularly would this seem to be true in view of the fact that the Acts of Congress thus adopted by reference by the Legislature are, as pointed out in the *Grafton* case and the *Shell Co.* case (*Grafton* v. *United States*, *supra*, 206 U. S. 333, 354-355; *People of Puerto Rico* vs. *Shell Co.*, *supra*, 302 U. S. 253, 264-266) *enactments of the same sovereignty* under which the Legislature itself acts.

Point VII

The Legislature has effectually adopted the "500 acre law" as a part of the local statutory law of Puerto Rico.

A. The Legislature may validly "adopt by reference" any part of the federal statutes already in force in the Island, as a part of the local statute. [Point VI, *ante*, pp. 29-32]. The Congressional Joint Resolution of May 1, 1900, and the Organic Act, were both directly applicable to the Island, and were in force there from the dates of their enactment by the Congress.

B. So much of Section 3 of the Joint Resolution (Appendix, *infra*, p. 69) as prohibits agricultural corporations from being authorized or permitted to own or control land in the Island, in excess of 500 acres, was specifically adopted by the Legislature as a part of the local statutes by subparagraph 4 of Section 3 of the Corporation Law of 1902, and by the revision of it March 9, 1911 (Appendix, *infra*, p. 75; *ante*, p. 3), by the provision that:

> "Sec. 3. Every corporation has power.
> "1. To have succession * * *.
> "4. To acquire and to hold * * * * *Provided, however,* **That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred."**

C. This adoption was long before the date, April 21, 1927 (*Complaint*, R. 2, 44), when this respondent was organized under the local "Corporation Law" of Puerto Rico, and in compliance with it, embodied that 500 acre restriction in its own Articles of Incorporation.

D. This *adoption by reference* of Section 3 of the Congressional Joint Resolution as a part of the body of the local statutes is equally applicable to the second paragraph of Section 39 of the Organic Act of 1917 for the Island; which, in so far as we are here concerned, is in effect simply a re-enactment and emphasizing of the Joint Resolution of 1900.

E. Since [insofar as this question is concerned] *the phraseology in which the Legislature expresses its will is immaterial,* so long as its intent is clear, it follows that it is really immaterial whether the Legislature first formally adopts the section of the federal act as a part of the local statute, and then formally proceeds to base its further local legislation upon the section thus formally adopted, or, by a short cut, without that formality, simply bases its local legislation upon a portion of the federal statutes already in force in the Island. The effect is the same, either way. It amounts to the adoption, *pro tanto,* of the federal statute "by reference". If the intent of the Legislature is clear, there would seem to be no objection to the short cut.

F. It follows that,—even aside from the earlier direct adoption of the Congressional Joint Resolution by the provisions of Section 3 of the local Corporation Act, as above pointed out,—the action of the Legislature in Acts Nos. 33 and 47 of 1935 in taking the short cut, and thus directly basing jurisdiction of the insular Supreme Court upon violations of these federal statutes then in force in the Island, was perfectly valid; and amounted, in effect, to an adoption by reference of those provisions of the federal statutes as parts of the local statutory law.

G. It follows that those statutes are valid.

H. And hence that the insular Supreme Court had jurisdiction of this proceeding.

SECOND

THESE STATUTES ARE APPLICABLE TO THIS CORPORATION.

Point VIII

Among the powers necessarily implied in the grant of "all local legislative powers" to the insular Legislature, in accordance with the universal understanding and the universal practice of State legislatures, **are the powers to charter private corporations, and to provide for their incorporation by general corporation laws; to provide what their charters or articles of**

incorporation shall contain; what property they may hold or own or use; what powers may be given to them under their articles of incorporation, or they may exercise, **and with what limitations; to prescribe the procedural means for confining them within the exercise of their charter powers,** and the penalties for violations of the limitations of their charters, and for *ultra vires* acts; to provide for their dissolution and the winding up of their businesses and the distribution of their properties; and in general to make regulations concerning them, of every kind.

These are all well recognized legislative powers universally exercised by the legislatures of the States.

Point IX

Likewise, among the legislative powers habitually exercised by the legislatures of the States, are the powers (subject to whatever general provisions may be made in the local State constitution) **to prescribe the forms of action and modes of procedure in the courts, and to change them from time to time.**

A. In accordance with this usual custom, the Congress, both in the former Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900 (Sec. 33; Appendix, *infra*, pp. 67-68), and likewise in the present Organic Act, the "Jones Law" of March 2, 1917 (Sec. 40, Appendix, *infra*, p. 71), gave broad powers in this respect to the former "Legislative Assembly" as well as to the present "Legislature" of Puerto Rico. By section 33 of the "Foraker Act", "the courts and tribunals of Porto Rico as already established" [by the Orders of General Davis, the military Governor for the United States] "and now in operation", including the insular Supreme Court and the district courts [*Cf. General Orders of Brig. Gen. Davis, Military Governor*, Appendix, *infra*, pp. 68-69] were continued, with the provision that the Chief Justice and Associate Justices of the insular Supreme Court and its Marshal should thereafter

be appointed by the President, by and with the advice and consent of the Senate of the United States, and that the Legislative Assembly, besides being empowered to direct how the other officials and attachés of the courts should be chosen,

> "shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attachés for each, **their jurisdiction, their procedure,** and all other matters affecting them." (*Emphasis supplied*)

B. And by Section 40 of the present Organic Act of March 2, 1917, the courts, as existing at that date, with their jurisdiction and forms of procedure, are likewise continued, with the similar provision (*Appendix, infra*, p. 71) that

> "the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico".

Point X

Pursuant to the legislative powers thus conferred upon it, both the general powers and the specific powers with relation to the courts and their jurisdiction and forms of procedure, **the former Legislative Assembly of Puerto Rico enacted a general corporation law, March 1, 1902** (Laws of 1902, pp. 73-76; Rev. Stats. and Codes of 1902, Civil Code, Title II, Sec. 32, *et seq.*, pp. 759-796), **and revised it by Act No. 30 of March 9, 1911** (Laws of 1911, pp. 87 *et seq.*; Comp. of Rev. Stats. and Codes, 1911, Pars. 407-491; Appendix, *infra*, pp. 74-78).

And likewise, it enacted "An Act Establishing *'Quo Warranto'* Proceedings", March 1, 1902 (Laws of 1902, pp. 67-68; Rev.

Stats. and Codes of 1902, Pars. 779-787, pp. 282-284; Rev. Stats. and Codes, 1911, Pars. 1319-1327; Appendix, *infra*, pp. 72-73).

A. By the corporation law, as revised by Act No. 30, *supra*, of March 9, 1911 "An Act To establish a Law of private corporations" [*long before the organization in 1927 of the corporation which is the respondent here*], provision was made for the organization of private "domestic corporations", for their articles of incorporation and other matters relating to them, including their powers, the duration of the corporate existence, and their dissolution. Sections 3 and 4 of that Act, relating to their corporate powers (Par. 409, Comp. of Rev. Stats. and Codes, 1911; Appendix, *infra*, pp. 75-76; *ante*, pp. 32-33, provides:

> **"Sec. 3. Every corporation has power:**
>
> 1. To have succession * * *
>
> 4. To acquire and to hold in any legal manner and to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: ***Provided, however,*** **That the power of any agricultural corporation organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.**[6]
>
> 5. To appoint the officers and agents * * * *
>
> 7. **To dissolve,** either voluntarily or **by operation of law** and in accordance with the provisions of this act.
>
> 8. To possess and exercise, **subject to the restrictions**

[6] The Legislature here *"adopts by reference"* Section 3 of the Congressional Joint Resolution as a part of the local statutes of Puerto Rico. *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 266 [*Confer, ante*, Point III-G, p. 22, and Point VII-B, p. 33].

and liabilities contained in this act and in the Civil Code and its articles of incorporation such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are not inappropriate to or inconsistent with such articles of incorporation or with the provisions of this act and of the Civil Code.

"Sec. 4. No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the preceding section." (*Emphasis supplied*)

B. By sections 2 and 6 of the *"Quo Warranto" law of* March 1, 1902, it was provided (Appendix, *infra*, p. 72):

"Section 2.—That in case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or *exercises rights not conferred by law;* The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of 'Quo Warranto' * * *

"Section 6.—In case any person or corporation against whom any such petition is filed, or" [is] "adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or is [its] franchise, and fine such person or corporation for * * * unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: * * *" (*Emphasis supplied*)

Point XI

A.—With those insular statutes in force (both the corporation law and the "*quo warranto*" law), the defendant-respondent corporation was organized as a "domestic corporation" under the laws of Puerto Rico, on April 21, 1927, and in section 4 of its

"Articles of Incorporation" (R. 6-8) it provided, in the statement of its corporate powers, in accordance with the limitation on the corporate powers of domestic agricultural corporations of Puerto Rico, contained in sub-paragraph 4 of section 3 of the local insular corporation law of March 9, 1911, as above quoted [as well as in accordance with the requirement and limitation contained in section 3 of Joint Resolution No. 23 of the Congress of May 1, 1900, *supra*], that the "aims and purpose for which this corporation is organized" are, among other things (*Complaint, "Exhibit A,"* R. 6-8):

> (c) To build up, * * * *, and manage undertakings whose purpose and object is the planting, cultivation and harvesting of sugar cane and the manufacture and sale of sugar, * * * *.
>
> (d) To raise, develop, purchase, own, and sell cattle, sheep and horses. To engage in agriculture in general. To plant, cultivate and harvest sugar crops, * * *
>
> (f) To purchase, lease, own, * * * estates and plantations located within or without the Island of Puerto Rico * * *; provided, however, that the rights of the corporation to own and control land in the Island of Puerto Rico shall be restricted to 500 acres only, and subject to the restrictions set up in section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America. (*Emphasis supplied.*)

That was the statement of the incorporators themselves. *These articles became a part of the corporation's contract with the government.*

B. Nevertheless, the defendant-respondent corporation, in direct violation of the restriction contained in the last above quoted *proviso* in subparagraph "(f)" of section 4 of its own Articles of Incorporation, thus voluntarily adopted by it in accordance with the laws and requirements both of the insular Corporation Law enacted by the Legislature of Puerto Rico and also of section 3 of the Joint Resolution of the Congress of May 1, 1900, proceeded to purchase and to cultivate

"in agriculture" an acreage of land in Puerto Rico very far in excess of 500 acres.

C. Neither the answer (R. 89-98), nor anything said in any of defendant's motions, or elsewhere, before the insular Supreme Court, nothing whatever in the case indicates any purpose, or attempt, on the part of this corporation to divest itself of any portion of the land it holds and uses for agricultural purposes, in excess of 500 acres, in violation of its own Articles of Incorporation; nor to discontinue its use for agriculture.[7] To the contrary, its manifest purpose is to continue to hold all of this great tract of land, and to continue to use it for agriculture, as hitherto, in direct violation of its own Articles of Incorporation, as well as of the local corporation law of Puerto Rico, and also of the Joint Resolution of the Congress of May 1, 1900.

D. In this respect this defendant-respondent corporation puts itself into substantially the same position, and attitude, taken by the Pullman Company in the great *quo warranto* case in the Supreme Court of Illinois, in which that court entered its decree, back in 1898, compelling the Pullman Company to divest itself of the ownership and control of the town or city of Pullman, Illinois, with all of the residences, schools, churches and municipal facilities which the Company had built and owned and maintained [and paid taxes upon] for many years for the residences and convenience of its own employees, but in doing which, as the court there held, it had exceeded the corporate powers granted to it by its own Articles of Incorporation under the laws of the State of Illinois.

The Illinois Supreme Court there said, in the course of a long and careful opinion (*People* v. *Pullman Palace Car Co.*, 175 Ill. 125, 163-165):

"In the case at bar the appellee is conceded to be

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[7] Defendant-respondent introduced no evidence at the trial, but contented itself with a motion to dismiss, at the conclusion of the plaintiff's case (*ante*, pp. 6-7; R. 121-129).

a corporation *de jure*, and the complaint is that it had assumed and exercised, and is assuming and exercising, powers not granted by its charter or implied by law. We find from its pleas the corporation is without lawful authority to perform the acts complained of; that it entered upon the performance of such acts in 1880 or 1881, in pursuance of a fully matured plan; that it has since continuously engaged in this unjustifiable undertaking, and was so engaged when this information was filed, and that it owns a tract of land * * * . ***The usurpations of the corporation are not only those of the past but also those of the present, and its plea admits it contemplates a repetition of the offenses in the future.***

"Our interpretation of the law, as applied to facts * * * , is, that the appellee corporation, at and before the time of filing the information, was exercising powers and performing acts not authorized either by the express grant of the charter or any implication of law; and further, that by some of such unauthorized acts * * * tend * * * to remove real estate from the operation of our Statute of Descent and place the title thereto in a corporation having perpetual succession and unending existence, and thereby withdraw it from the channel of trade and commerce; to create monopolies * * * , and that its acts are opposed to good public policy. **We do not think the demand of the sovereign that usurpations so clearly antagonistic to good public policy shall be restrained can be defeated by any imputation of *laches*, or upon the ground that acquiescence is to be inferred from the failure to invoke the aid of the courts at an early day.**" (*Emphasis supplied.*)

THIRD

IN ANY EVENT SO MUCH OF ACT NO. 47 IS VALID AS VESTS ORIGINAL JURISDICTION IN THE SUPREME COURT OF PUERTO RICO IN CASES OF CORPORATE VIOLATIONS OF INSULAR STATUTES.

Point XII

Act No. 47 vests the Supreme Court of Puerto Rico with original jurisdiction in *quo warranto* proceedings brought in the name of

The People of Puerto Rico in cases of corporate violations of the *insular statutes,*

> "whenever any corporation * * exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico *or of any of its statutes*". (Appendix, *infra*, p. 79).

A. The latter provision thus vesting original jurisdiction in the insular Supreme Court in the case of a corporation's violation "OF ANY OF ITS STATUTES",—that is to say, in case of the violation of any of the *insular statutes* of Puerto Rico,—is wholly independent of the other provision, with which it is coupled in the statute as above quoted, vesting jurisdiction in cases of violations of "the Organic Act of Puerto Rico". *They are two entirely separate grants of jurisdiction.* Although frequently, as in the present case, the same act of a corporation,—as, here, the holding and devoting to agricultural purposes of a tract of land vastly in excess of 500 acres,—may be at the same time at once a violation both of the insular statutes and also of the Organic Act, nevertheless there are here two separate and distinct grants of jurisdiction; the one in cases of violation of the Organic Act, and the other in cases of violation of the insular statutes.

B. The grant of jurisdiction in cases of violation of insular statutes is complete in itself, wholly independently of the other grant. This is manifest on the face of the statute; and was, in effect, recognized in the majority opinion of the Circuit Court of Appeals (R. 326)[8].

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[8] Where the majority opinion refers to it as

> "a provision in Act No. 47, *supra*, Sec. 2, which provides, that, if any corporation exercises rights not conferred by law, or performs acts or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or any of its statutes, the Attorney General or any district attorney may file a petition in the Supreme Court of Puerto Rico for an information in the nature of *quo warranto*."

C. This provision vesting jurisdiction in cases of violation of insular statutes is complete in itself, and can stand independently of the coordinate provision vesting jurisdiction in cases of violation of the Organic Act.

The majority opinion of the Circuit Court of Appeals raises a doubt on this point [*but does not decide it*]. It says (R. 328-329):

> "Since Act No. 47 is claimed by the defendant to be a void act because it attempted to amend a *federal*[9] statute * * *, and the entire Act is therefore rendered void, the issue is whether a valid complaint can be based thereon for a violation of a part of the Act which it now claims to be valid, if taken by itself, no reservation being made that if any part of the Act is invalid it shall not affect the remainder of the Act. The real issue in this case, therefore, is not whether a valid complaint could have been made under Act No. 47 but whether one was made, assuming Act No. 47 can be held to be a valid act."

D. There is no sound basis for any doubt of the validity of this part of this statute. As JUDGE PETERS points out in his dissenting opinion (R. 332), this provision of Act No. 47 could stand as a separate act by itself, under the established rule of this court as stated in the cases which JUDGE PETERS there cites. *Champlin Refining Co.* vs. *Corporation Commission of Oklahoma*, et al., 286 U. S. 210, 234; *El Paso & N. E. Ry. Co.* vs. *Gutierrez*, 215 U. S. 87, 96-97; as well as earlier cases. *Connolly* vs. *Union Sewer Pipe Co.*, 184 U. S. 540, 565; *Pollock* vs. *Farmers Loan & Trust Co.*, 158 U. S. 601, 635; *Reagan* vs. *Farmers Loan & Trust Co.*, 154 U. S. 362, 395-396; *Field* vs. *Clark*, 143 U. S. 649, 695-696.

The rule, as stated by this court in the *Champlin Refining Co.* case (286 U. S. at p. 234), is:

> "The unconstitutionality of a part of an Act does

[9] Italics are the court's.

not necessarily defeat or affect the validity of its remaining provisions. *Unless it is evident that the legislature would not have enacted those provisions which are within its power,* independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." (*Italics supplied*)

E. Judge Peters correctly said (*Dissenting opinion*, R. 332, *supra*):

> "It seems to be recognized that Act No. 47 confers jurisdiction on the Puerto Rico Supreme Court in *quo warranto*, at least, for violation of local law. It cannot be questioned that there was a violation of local law, both in respect of holding more than the permitted number of acres of land and in exercising powers not given by the articles of incorporation."

F. There is no suggestion in the majority opinion of any belief that the Legislature of Puerto Rico "would not have enacted those provisions which are within its power",—*those vesting jurisdiction in cases of violation of insular statutes*,—"independently of" the balance of the statute vesting jurisdiction in cases of violation of "the Organic Act", even if the Legislature had realized that there was any possible question about the validity of the balance of the act. To the contrary, there appears to be no possible reason to doubt that the legislators would have gone ahead and enacted the provisions vesting jurisdiction in cases of violation of *insular statutes*, independently, if any possible doubt had then been suggested to them of their power to enact the balance of the statute. The majority opinion itself finds (R. 318) the purpose of the Legislature:

> "that the legislature of Puerto Rico enacted several statutes, the common purpose of which was to provide the necessary remedial measures for curbing existing land monopolies and preventing further violations of the provisions of Sec. 3 of the Joint Resolu-

tion No. 23 of the Congress and Sec. 39 of the Organic Act approved March 2, 1917".

With this purpose in mind, can it be doubted that the Legislature, if it had realized that there could be any doubt about its power to vest jurisdiction in the insular Supreme Court by that part of this statute, Act No. 47, which vests such jurisdiction in cases of corporate violations "of the express provisions of the Organic Act of Puerto Rico", would nevertheless surely have proceeded to enact, independently, that portion of the statute which vests jurisdiction in cases of violations of insular statutes, *"of any of its statutes"*,—by means of which the same legislative purpose of "curbing existing land monopolies and preventing further violations" of the Joint Resolution of the Congress and of Section 39 of the Organic Act could be effected, since every violation of the act of Congress by any agricultural corporation in the Island by holding more than 500 acres of land is likewise necessarily also a violation of the insular corporation law requiring that restriction to be placed in its Articles of Incorporation and forbidding the exercise of any powers not authorized by the Articles.

F. It follows that this portion of Act No. 47 [*and independently of any possible question as to the balance of the statute*],[10] is valid. **In and of itself alone, this constitutes a sufficient basis for the jurisdiction of the insular Supreme Court in this case.**

FOURTH

ACT NO. 47 AMPLY VESTS THE INSULAR SUPREME COURT WITH JURISDICTION, NOT ONLY OF THE PROCEEDINGS IN THIS CASE, BUT ALSO TO MAKE THE FINDINGS AND TO ENTER THE JUDGMENT APPEARING IN THE RECORD.

[10] Of course, petitioner, the People of Puerto Rico, believes the entire Act valid [*Ante*, "FIRST," Points I-VII, pp. 17-34].

POINT XIII.

The majority opinion in the Circuit Court of Appeals is clearly in error on this point.

A. The majority opinion in the Circuit Court of Appeals says (R. 328):

> "The Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute. Unless a case comes strictly within the statute defining its jurisdiction, it can not proceed. It does not appear, therefore, that the Supreme Court of Puerto Rico has been given the power to declare a forfeiture of the property of a corporation and impose heavy fines thereon for an *'ultra vires* act in violation of its articles of incorporation, or of a federal law."

In this, the majority opinion is clearly in error.

B. In the first place, the opinion is in error in saying, as above quoted, that: "The Supreme Court of Puerto Rico is a statutory court and its jurisdiction is defined by statute"; and also in saying: "Unless a case comes strictly within the statute defining its jurisdiction, it can not proceed".

C. If by these statements it is meant to imply that the insular Supreme Court is a court of limited jurisdiction, or of jurisdiction dependent on statutory definition or limitation, like many inferior courts, then the statement is erroneous. The Congress has not placed any such limitation upon the jurisdiction of the Supreme Court of Puerto Rico. **It is a superior court of general jurisdiction.** As already pointed out (Point IX, *ante*, pp. 35-36) the first Organic Act for the Island, the "Foraker Act" of April 12, 1900 [Sec. 33; Appendix, *infra*, pp. 67-68], vested "the judicial power" "in the courts and tribunals of Porto Rico as already established and now in operation * * * under and by virtue of General Orders No. 118, as promulgated by Brigadier-General Davis, United States Volunteers, August 16, 1899"; Those

courts included the **"Supreme Court of Justice"** constituted by General Orders No. 118, paragraph 2, as "a Judicial Bench for all civil and criminal business" (Appendix, *infra*, pp. 68-69), without any further definition or limitation upon its jurisdiction. The Congress, in thus continuing the existing courts by the "Foraker Act" of April 12, 1900, further provided [*Proviso* to Sec. 33, *supra*; Appendix, *infra*, p. 68] that the "legislative assembly" "shall have authority to legislate from time to time as it may see fit with respect to said courts, * * * their jurisdiction, their procedure, and all other matters affecting them". And the present Organic Act of March 2, 1917, for Puerto Rico, in its turn continues the same courts, including the Supreme Court, by its provision (Appendix, *infra*, p. 71);

> "Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attaches thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That * * * the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico."

D. *Likewise the further above quoted statement* in the majority opinion (R. 328, *supra*) that: "It does not appear", "that the Supreme Court of Puerto Rico has been given the power to declare a forfeiture of the property of a corporation and impose heavy fines thereon for an *ultra vires* act in violation of its articles of incorporation, or of a federal law", *is clearly erroneous.*

(1) In so far as this statement relates to "an *ultra vires* act *in violation of its articles of incorporation*", it

has no appositeness in this case, *unless* it is intended to be applicable to the particular kind of "*ultra vires* act" alleged in the complaint and here before the court. The particular kind of "*ultra vires* act" alleged in the present case (R. 2-3, 44-45) and found by the insular Supreme Court (R. 304, 305; *ante*, p. 2), is that a domestic agricultural corporation of Puerto Rico, expressly limited by its articles of incorporation to the ownership and control of not to exceed 500 acres of land, in direct defiance of that restriction contained in its own articles, as well as of the restrictive requirements both of the local statutes and also of the federal law in compliance with both of which its articles were adopted, is holding a great tract of land vastly in excess of 500 acres, and devoting it to agriculture, "to the planting, cultivation, and harvesting of sugar cane". The complaint alleges these facts. The insular court has found them [the words "ultra vires" do not appear in the complaint, nor in the insular court's findings or judgment]. The local *quo warranto* law, from its first enactment in 1902 (Appendix, *infra*, pp. 72-73; Secs. 2, 6) contained the provision exposing any corporation which "exercises rights not conferred by law" to ouster from its franchise and to be fined in *quo warranto* proceedings.

(2) And Section 2 of that *quo warranto* law of 1902, as now amended by this Act No. 47 of 1935, expressly vests the Supreme Court of Puerto Rico with original jurisdiction in all such cases, "whenever any corporation * * * exercises rights, performs acts, or makes contracts in violation * * * of any of its statutes" [the local statutes of Puerto Rico].

(3) How then, can the majority opinion of the Circuit Court of Appeals properly say, as above quoted (R. 328, *supra*) that, "It does not appear" that the Supreme Court of Puerto Rico "has been given power to declare a

forfeiture of the property[11] of the corporation and to impose heavy fines thereon" "for an *ultra vires* act in violation of its articles of incorporation",—*at least for the particular kind* of *ultra vires* act alleged, and found by the insular Supreme Court, in the present case; that is to say the kind of *ultra vires* act which amounts to a direct violation and defiance of the insular statutes [as well as of the federal law]?

(4) Likewise, so far as relates to "an *ultra vires* act in violation * * * of a federal law", what is said in the preceding subparagraphs is equally applicable, *mutatis mutandis*.

FIFTH

THE ALLEGATIONS OF THE COMPLAINT OF VIOLATION OF INSULAR STATUTES WERE SUFFICIENT; AND IN ANY EVENT THE JUDGMENT OF THE SUPREME COURT OF PUERTO RICO SHOULD NOT HAVE BEEN REVERSED ON SUCH A QUESTION OF LOCAL PLEADING OR PROCEDURE.

Point XIV.

The allegations of the complaint are sufficient, under the local Code of Civil Procedure of Puerto Rico, to charge violation of the insular statutes, and to give the insular Supreme Court jurisdiction on that ground.

A. The majority opinion in the Circuit Court erroneously holds them insufficient. It says (R. 329):

> "The real issue in this case, therefore, is * * * * whether the complaint in this case sets forth valid grounds for dissolving this corporation through *quo warranto* proceedings authorized under Act No. 47 *and the forfeiture of its property*[12] and the imposing

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[11] It is to be remembered, again, that no forfeiture "*of the property*" is involved in this case; but only of the corporate franchise,—of the right to continue as a corporation.

[12] *Confer* foot-note 3, *ante*, p. 10, and foot-note 11, *ante*, this page.

> of heavy fines. *No specific charge is made in the complaint of a violation of a Puerto Rican statute,* either of Act No. 30 of 1911, or any other local Act. We think, if such was the purpose of the pleader, *the allegation is too indefinite to constitute a good charge* in a proceeding on which to base a judgment of a forfeiture of valuable property and to impose heavy fines." (*Italics supplied*)

B. But the complaint contains a complete "*statement of the facts constituting the cause of action*".[13] It is clearly sufficient under the local Code of Civil Procedure of Puerto Rico [Secs. 103, 122, 132, 191; Appendix, *infra*, pp. 80-82], and under the established procedure and prior rulings of the insular Supreme Court, to constitute a good charge of violation of the local "Corporation Law", and to sustain these *quo warranto* proceedings.

It states the facts: The corporation's organization for agricultural purposes under the local Corporation Law; that its articles of incorporation contain the required prohibition [*required by the local Corporation Law, as well as by the federal Joint Resolution*] against holding more than 500 acres of land [setting the articles out in full in "Exhibit A" to the complaint, R. 5-14]; that nevertheless it owns, and "applies" to agriculture, lands far in excess of 500 acres, amounting to some 12,188 acres. The relief prayed is (R. 4-5; 46-47)

> "to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises."

C. *While there is no specific allegation of the legal con-*

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[13] Puerto Rico Code of Civil Procedure, Sec. 103, subpar. 2; Appendix, *infra*, p. 81.

clusion of violation of the local Corporation Law under which the corporation was organized; and no specific reference to the *Quo Warranto* Law authorizing these proceedings; yet the complaint *does allege all the facts* necessary to demonstrate violation, and to constitute the basis for these *quo warranto* proceedings.[14]

D. **These allegations are sufficient under the local Code of Civil Procedure of Puerto Rico.** Under that Code, it is not necessary to allege the legal conclusion that the actions set out in the complaint amount to a violation of the insular statutes, or of which particular insular statute, such as the local Corporation Law. Under that code, it is sufficient to allege the facts. The necessary legal conclusions may be drawn by the court.

E. The code provides[15] (Appendix, *infra*, pp. 80-82):

"Section 103.—(426 Cal.) The complaint must contain:

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[14] And it alleges also (R. 3-4, 45-46) that this violation and the ownership of this great tract of land, is in violation of the public policy of the People of Puerto Rico established and reiterated, among other things, by the enactment of these two statutes, Acts Nos. 33 and 47 of 1935, vesting original jurisdiction in cases of such violation in the Supreme Court of Puerto Rico.

[15] Code of Civil Procedure, Act of March 10, 1904 [Rev. Stats. and Codes of Puerto Rico, 1911, Pars. 4985-5406], as revised and re-published with the statutory "Rules for the Printing of the Code", under Act No. 6 of March 31, 1933, Laws of 1933, pp. 194-196, as the present "Code of Civil Procedure, Edition of 1933".

The "Rules" provide, *inter alia*:

"Rule 1.—Each section of the Code of Civil Procedure shall carry in parentheses the section to which it is equivalent in the Code of Civil Procedure of California.

"Rule 2.—At the foot of each section, in English as well as Spanish, shall be noted the jurisprudence of Puerto Rico that has cited, applied, or interpreted said section, from Volume 1 to Volume 44 of the Puerto Rico Reports."

"1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

"2. **A statement of the facts constituting the cause of action,** in ordinary and concise language. (*Emphasis supplied.*)

"3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated."

Section 122 provides that the allegations

"must be liberally construed, with a view to substantial justice between the parties";

Section 142, that:

"The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect";

and Section 191 that, while, if no answer has been filed, the relief granted the plaintiff cannot exceed what he has demanded in his complaint, yet "in any other case" [that is to say, *where, as in the present case, the defendant has filed an answer*], then

"the court may grant him" [the plaintiff] "any relief consistent with the case made by the complaint and embraced in the issue".

F. Printed in the 1933 edition of the Code, under the various sections, in accordance with "Rule 2" of the "Rules for Printing the Code"[16] are various citations to decisions of the Supreme Court of Puerto Rico construing the particular sections, thus in effect indicating the approval or legislative adoption of those judicial interpretations.

G. Among the citations so printed under Section 103 of the Code (Edition of 1933, p. 41) are *Vicenty* vs. *Vazquez*, 11 P. R. Rep. 275, 284; *Ochoa* vs. *Lanza*, 17 P. R. Rep. 398, 406; and *Garcia* vs. *Preston*, 17 P. R. Rep. 556, 558.

[16] See footnote 15, *ante*, p. 51.

The citation to the first of these cases, *Vicenty* vs. *Vazquez, supra,* 11 P. R. Rep. 275, 284, is also printed under Section 191 of the Code (Ed. of 1933, p. 73).

In this last mentioned case of *Vicenty* vs. *Vazquez, supra,* in dealing with the sufficiency of a complaint, and referring directly to Sections 103 and 191 of the Code, the Supreme Court of Puerto Rico said (11 P. R. Rep., at pp. 284-285):

> "It is high time that we should realize that in modern procedure the prayer of a complaint is not of great importance, and, in fact, such prayer, as we understood it in the former system of procedure, is not now necessary. It is enough in order that the complaint may be considered sufficient that it embody the requisites prescribed by section 103 of the Code of Civil Procedure and permit of the trial being held, at which the proper evidence may be heard.
>
> **"All that the judgment has granted is compatible with the allegations of the complaint and is comprised in the subject matter of the litigation.** The judge of the Mayaguez court has therefore complied with the provisions of section 191 of the Code of Civil Procedure". (*Emphasis supplied.*)

In *Ochoa* vs. *Lanza, supra,* 17 P. R. Rep. 398, 406, the insular Supreme Court, after pointing out that "conclusions of law serve no purpose in pleadings", said [quoting approvingly from Encyclopedia of Pleading and Practice, Vol. 12, p. 1022]:

> "The system of allegations under the code is emphatically a system of facts; only facts must be alleged—that is, in contradistinction to law, arguments, hypotheses, or evidence of the facts."

And in *Garcia* vs. *Preston, supra,* 17 P. R. Rep. 556, 558, the insular Supreme Court, referring to the California Code of Civil Procedure upon which the Puerto Rico Code is modelled [17], said:

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[17] See "Rule 1" of the Rules for Printing the 1933 edition of the Puerto Rico Code of Civil Procedure. Footnote 15, *ante,* p. 51.

> "A complaint under our system must contain a statement of the facts in ordinary and concise language." (Code of Civil Procedure, sec. 103). In a very early case in California, MR. JUSTICE FIELD held that 'facts only must be stated. This means facts as contradistinguished from the law, from argument, from hypothesis, and from the evidence of the facts.' ".

H. Under the Code, and in the light of the foregoing rulings, the allegations of the complaint in the present case were amply sufficient to support the insular Supreme Court in taking jurisdiction of this proceeding and in its findings and judgment based upon the corporation's violation of the local corporation law, demonstrated by the facts alleged in the complaint. In treating the allegations as sufficient for that purpose the insular Supreme Court was consistently following its own earlier rulings under the Code.

Point XV.

This ruling of the insular Supreme Court interpreting the local Territorial Code of Civil Procedure and adhering to its own former rulings [in effect adopted by the Legislature by approving the printing of the citations in the 1933 edition of the Code] **was, in any event, not so "clearly erroneous" as to justify the Circuit Court of Appeals in disturbing it, or in reversing the judgment of the Supreme Court of Puerto Rico on this question of local pleading or procedure.**

A. The rule of the respect to be accorded to a decision of a local Territorial court of last resort, interpreting and applying local statutes and local rules of pleading and procedure, has been recently emphatically re-stated by this court with reference to decisions of the Supreme Court of Puerto Rico. In *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511, this court, reversing the Circuit Court of Appeals for the First Circuit, said:

"And this Court has declared its unwillingness to overrule Puerto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute, and to sustain such a construction in the absence of clear or manifest error.

"* * *. Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

And this Court has now again emphatically reiterated the same principle. *Sancho Bonet, Treasurer* vs. *Texas Company, supra*, United States Law Week, January 2, 1940, pp. 37, 38. To the same effect are also the earlier decisions cited in the footnotes to this court's opinion in the *Yabucoa Sugar Co.* case (306 U. S., *supra*, at pp. 509-510). The rule is settled.

B. Clearly, therefore, JUDGE PETERS was right in his dissenting opinion hereinbefore quoted (R. 332; *ante*, Petition, p. 9) in holding the allegations of the complaint sufficient, and that in any event the judgment of the insular Supreme Court,

"should not be reversed on what amounts to a question of pleading, where the issues are clear enough, in a proceeding which, after all, does not differ essentially from any other suit aimed to settle a dispute between the parties".

C. The majority opinion was wrong (R. 329, *hereinbefore quoted, ante*, pp. 49-50) in reversing it on this ground.

SIXTH

THE *QUASI*-SOVEREIGN GOVERNMENT OF PUERTO RICO CANNOT BE ESTOPPED FROM ENFORCING ITS STATUTES LIMITING THE LAND-HOLDING POWERS OF ITS DOMESTIC AGRICULTURAL CORPORATIONS, BECAUSE OF DELAY OR LACK OF ACTION BY FORMER INSULAR EXECUTIVE OFFICIALS OR FOR-

MER LEGISLATURES; PARTICULARLY, WHERE, AS HERE, THE INSULAR STATUTES WERE ENACTED IN ORDER TO CARRY CONGRESSIONAL STATUTES AND THE POLICY OF THE CONGRESS INTO EFFECT.

Point XVI.

The Government of Puerto Rico is *quasi*-sovereign.

In relation to the question here presented Puerto Rico stands on the same footing as a State of the Union. *People of Porto Rico* vs. *Rosaly*, 227 U. S. 270, 274; *People of Puerto Rico* vs. *Shell Co., supra*, 302 U. S. 253, 261-262.

Point XVII.

The majority opinion of the Circuit Court of Appeals is clearly in error in this respect, and appears to be in direct conflict with the decisions of this court in *Chicago B. & Q. R. R. Co.* vs. *Iowa, supra*, 94 U. S. 155, 162, and *Louisville & Nashville R. R. Co.* vs. *United States, supra*, 282 U. S. 740, 759, as well as with the decisions of the Circuit Courts of Appeals of the Second and Sixth Circuit, and decisions of the courts of last resort of several of the States.[18]

A. Although recognizing (R. 328) the decisions of this court in the *Chicago B. & Q. R. R. Co.* vs. *Iowa* and *Louisville & Nashville R. R. Co.* vs. *United States* cases, as holding, respectively, that "*A statute, it is true, is not rendered ineffective by non-use*" and "*A failure to enforce a law does not necessarily repeal it*", the opinion nevertheless proceeds to say (R. 328, *supra*):

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[18] *Seeley* vs. *Helvering* (C.C.A.—II), 77 F. (2d) 323, 324; *Standard Oil Co.* vs. *Fitzgerald* (C.C.A.—VI), 86 F. (2d) 799, 802; *People* vs. *Pullman Palace Car Co., supra*, 175 Ill. 125, 163-165; *Pearson* vs. *International Distillery*, 72 Iowa 348, 34 N. W. 1, 5-6, *affirmed, sub nom. Kidd* vs. *Pearson*, 128 U. S. 1; *Interstate Forwarding Co.* vs. *Vineyard* (Tex. Civ. App.), 3 S. W. (2d) 947, 957; *State* vs. *Burr*, 79 Fla. 290, 84 Sou. 61, 74; *State* vs. *Meek*, 26 Wash. 405, 67 Pac. 76, 78; *State* vs. *Nease*, 46 Ore. 433, 80 Pac. 897, 899; *Parker* vs. *Board of Dental Examiners*, 216 Cal. 285, 14 Pac. (2d) 67, 73.

"While it may be urged that the insular government may not be prevented from invoking the statutes in a proper case prohibiting the limitation of holdings of agricultural land in excess of 500 acres, we think it should not be permitted *to forfeit land for past violations* which it has winked at and condoned; and if it *confiscates* them it must do so under the rules of eminent domain in accordance with the provisions of the second paragraph of Sec. 6 of Act No. 47,[19] Laws of 1935 (Special Session), *supra*, hereinbefore referred to." (*Italics supplied*)

B. This holding reflects *two serious misapprehensions* in relation to this case: (a) In considering as of importance in this case the thought that the insular government "should not be permitted *to forfeit land*"; and (b) In speaking only of "*past violations*" which "it has winked at and condoned".

Point XVIII

This case does not involve any forfeiture of land.

As heretofore pointed out [*ante*, p. 15; and footnotes 3, 11, 12, pp. 10, 49] *no forfeiture of land is involved in this case*. No such forfeiture was asked in the complaint (Prayer, R. 4-5, 46-47); and none was adjudged by the insular Supreme Court, nor even hinted at in its findings (R. 304, 305). And yet this idea, that the insular government cannot be permitted to "*forfeit land*" in this proceeding, runs all through the opinion of the majority judges of the Circuit Court; and manifestly influences their conclusions. It reflects a wholly mistaken impression of the character of the case. No question of land forfeiture is involved, in any way.

Point XIX

Nor is this simply a case of "past violations".

A. The foregoing quotation from the opinion (R. 328;

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[19] The same Act No. 47 upon which (with Act No. 33) these proceedings are based.

ante, p. 57) further reflects *another erroneous impression*, that this case is simply one of "*past violations*" which the insular Government "has winked at and condoned".

B. *But this is not a case simply of "past violations" by this corporation.* The complaint does not run upon any such ground. Its allegations are that this corporation [**in the present tense, and at the present time**; Pars. (d) and (e); R. 3, 45]:

> "(d) * * *, owns and controls at present in full ownership, and has owned and controlled for some time, several estates in excess of 500 acres, * * * *.
> "(e) The total area * * * which, as already stated, it applies to agriculture, covers some 12,188 acres."

C. The answer of this respondent corporation, defendant in the insular court (R. 89-98), does not deny these allegations of present continuing, active ownership and control. It thereby directly admits them. [Sec. 132, Code of Civil Procedure of Puerto Rico; Appendix, *infra*, p. 82] *Confer, ante*, Point XI-C, p. 40.

D. In this respect, as hereinbefore noted (*ante*, Point XI-D, pp. 40-41), this respondent corporation is in exactly the same position as was the Pullman Company in continuing to maintain the proprietary city of Pullman; and what the Supreme Court of Illinois said in that case (*People* vs. *Pullman Palace Car Co.*, 175 Ill. 125, 163-164; quoted, *ante*, Point XI-D, pp. 40-41) is equally applicable here:

> "The usurpations of the corporation are not only those of the past but also those of the present, and its plea admits it contemplates a repetition of the offenses in the future."

POINT XX

There is here no *ex post facto* action against this corporation.

A. Respondent says, in its "Brief in Opposition" here, filed before certiorari was granted, referring to the provisions added to the later clauses of Sections 2 and 6 of the Puerto Rican *Quo Warranto* Law by Act No. 47 of the Special Session of 1935,—contemplating that, under certain circumstances, if the insular government shall have so "*chosen*",[20] the lands of offending corporations may be confiscated in extreme cases,—that those provisions are,—[or would be, if they should be applied in the present case],—*ex post facto;* because this corporation acquired its lands in excess of five hundred acres prior to the enactment of that amendatory statute No. 47 in 1935; and that, therefore, the statute is invalid, because, in the absence of any express "separability clause", such invalidity of this *ex post facto* provision invalidates the entire statute.

B. Respondent itself points out (*Brief*, p. 3) that it invited the attention of the Circuit Court of Appeals to this contention, both by its assignments of error in that court (R. 309) and by argument there. But the Circuit Court of Appeals ignored the contention; did not go along with the respondent in this respect.

C. Respondent, however, now thinks that that part of the majority opinion of the Circuit Court of Appeals holding[21] [R. 328; *confer ante*, "Questions Presented * * Fourth", p. 10; and pp. 56-58 *ante*] that the insular government "should not be permitted to forfeit lands for past violations which it has winked at and condoned",

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[20] "and when * * the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction"; next to the last sentence of Section 6 as amended by Act No. 47; Appendix *infra*, p. 80.

[21] Which the respondent does not attempt directly to defend.

may be explained on the theory that (*Respondent's Brief in Opposition*, p. 17):

> "The Circuit Court of Appeals obviously felt that an intending forfeiture (confiscation or alienation of Respondent's land) was contemplated and expressed the opinion that in view of its long tolerance of the violations which Act No. 47 makes a ground of confiscation Petitioner should not be permitted to confiscate the land of defendant corporations under the provisions of Act No. 47 for violations occurring prior to the passage of that Act; in other words, that the penalty of confiscation should not operate retroactively."

D. No reply to this seems necessary. It seems hardly necessary to point out that, if the insular government had "chosen" to confiscate this respondent corporation's lands under that provision of the statute, it would have been necessary for the government to set up, by proper allegations [either in this proceeding or in some other proceeding], that it had so "chosen", and to ask for a decree of confiscation on that basis, and thus to submit the matter to the court for decision; and that, of course, in any such proceeding the respondent corporation would have been entitled to its day in court, and to its opportunity to combat the government's claim of right to have so "chosen" to confiscate the land.

And, in such a case, the corporation would have the opportunity, among other things, if it so desired, to set up [and to be heard upon] its contention that, with regard to its lands purchased prior to 1935, the application of those provisions of that statute would be in the nature of an *ex post facto* proceeding.

E. BUT NONE OF THOSE QUESTIONS IS HERE. The government has not so "chosen" to confiscate this corporation's lands. No such allegation is in the complaint here. Accordingly, the Circuit Court of Appeals, like the insular

Supreme Court, ignored this contention of the respondent.

And there is no basis for respondent's present theory in its brief, as above quoted, that that contention is the explanation of what the Circuit Court of Appeals [erroneously] said as to a supposed estoppel of the insular government; or that what the Circuit Court said on this subject was based, in any way, on respondent's contention in this respect.

F. In any event, even if that *ex post facto* theory were here upon this record [*which it is not*], there are two answers:

FIRST. *Even if respondent's argument were sound, it would not go to the extent of invalidating the statute.* That is not the effect of the finding, in an ordinary case, that a penal statute has been enacted after the commission of a particular offense charged against a particular defendant, and that it is, therefore, not applicable to that offense. For example, if, in a State where there is no capital punishment for murder, the legislature should change the law and provide capital punishment for that offense, then the fact that the penalty of capital punishment could not be imposed for a murder committed prior to the enactment of the new law, for which the offender might be brought to trial thereafter,—[because, manifestly, if applied to that offense, it would be in the nature of an *ex post facto* application of the law],—would not at all invalidate the statute. It would merely mean that the new statute is not applicable to offenses committed before its enactment. So here; even if, for the purposes of the argument, respondent's contention on this point were to be conceded to be sound. But

SECOND. *In any event the argument is not applicable in favor of this respondent in this case.* As is pointed out in Point XIX, *ante*, p. 57-58, this respondent corporation appears to be *still violating the statute*; still violating the

restriction contained in its own Articles of Incorporation; and intending actively to continue its violations.

The prohibitions, both of the federal legislation and of this corporation's own Articles of Incorporation, are not directed simply at the fact of its having purchased the land at some time in the past; but are directed, equally, at its continuing, while engaged in agriculture, to hold and to control this great tract of land, and to use it for agricultural purposes. *These are present violations* of the statutes, and of its own Articles, committed and continuing to be committed *since the date of the enactment of Act No. 47 in 1935.* There is here no disclaimer; no statement of any purpose to discontinue the violations; no application to the court for clemency on any such ground. In so far as the violations have continued since the date of the enactment of Act No. 47, and still continue, there is no ground for respondent's *ex post facto* argument.

G. Respondent complains (*Brief in Opposition*, pp. 2-3, 12-13) of the filing of *lis pendens* notices with the local Registrars of Property, and that the insular Supreme Court did not consider in this proceeding the respondent corporation's motion to direct their cancelation; and respondent seems to consider that as being some ground for sustaining the judgment of the Circuit Court of Appeals here. But that question is not in this case at all, on this record. Respondent could not raise it upon its demurrer to the complaint which does not mention that subject (R. 2-5, 44-47). As was properly pointed out in the Attorney General's answer (R. 65) to the respondent's motion in the insular Supreme Court for the cancelation of these notices,

> "III. The defendant has an adequate and proper remedy by requesting the cancelation of the aforesaid notices *in the district court.*" (*Italics supplied*)

Had the respondent so desired, it could have raised this question by direct proceedings in the District Court.

from which it could have appealed in regular course, in case it should have felt itself aggrieved by the decision of that court.

But no question relating to the *lis pendens* notices, or to their possible effect, is here in this case; or can have any bearing here. The Circuit Court of Appeals properly ignored respondent's contention in this respect.

POINT XXI

The titles and form of Acts 33 and 47 are amply sufficient under Section 34 of the Organic Act.

Respondent says (*Brief in Opposition*, pp. 4, 9) that these Acts Nos. 33 and 47 of 1935 offend against the provisions of Section 34 of the Organic Act for Puerto Rico as to title, and as to amending prior acts of the Legislature.[22]

A. As respondent itself says (*Brief*, pp. 2, 3), the respondent raised this question by its assignments of error in the Court of Appeals; and argued it there. But that court ignored it; although, in stating the case (*Majority Opinion*, R. 320), it noted the fact that the respondent corporation was making that contention. In other words, in effect, it agreed with the insular Supreme Court in overruling respondent on this point.

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[22] Organic Act, Sec. 34, Pars. 8 and 9, c. 145, 39 Stat. 951, 962; Appendix, *infra*, p. 70:

"No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

"No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length."

B. *The contention is unsound in any event.* These statutes do not offend against these provisions of the Organic Act.

FIRST. The titles are sufficient. Each of them "*states a single main object;*[23] and is fully sufficient to guard against the evil confusion prohibited by the Organic Act" (*Gallardo vs. Porto Rico Ry. Light & Power Co.*, 18 F. (2d) 918, 922), the aim being "to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and fraud in legislation." (*Posados, Collector, vs. Warner, Barnes & Co.*, 279 U. S. 340, 344).

SECOND. As to the respondent's contention (*Brief*, p. 9) that these provisions of Section 34 of the Organic Act prevent the Legislature of Puerto Rico from "adopting by reference"[24] the federal joint resolution [the 500-acre law], manifestly the respondent is mistaken. Respondent cites no authority in support of this contention. Plainly, on its face, paragraph 9 of Section 34 [Footnote 22, *ante*, p. 63] *relates simply to reenactment or amendment of former acts of the Legislature itself.* The Congress did not intend to prevent the Legislature from referring to the underlying legislation of the Congress, which is a part of the "supreme Law of the Land" in the Island [Const. Art. VI, Sec. 2; which the Legislature could not change] *as boundary stones*, or from thus adopting it by reference as a part of its own local legislation. [*Confer Points VI and VII, ante*, pp. 29-34.]

The Circuit Court of Appeals was right in ignoring this contention of the respondent.

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[23] *Italics supplied.*

[24] *Ante*, Points VI and VII, pp. 29-34.

CONCLUSION

The decision of the Supreme Court of Puerto Rico and its judgment in this case were right, and should be affirmed. The judgment of the Circuit Court of Appeals entered on the majority opinion of JUDGES WILSON and MAHONEY, reversing the judgment of the insular Supreme Court, over the dissenting opinion of JUDGE PETERS, was wrong and should be reversed.

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APPENDIX

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. (Art. IV, Sec. 3, Cl. 2.)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land. (Art. VI, Cl. 2.)

No person shall be * * * ; nor be deprived of life, liberty, or property, without due process of law. (Fifth Amendment.)

FEDERAL STAUTES:

(1) **The former Organic Act for Puerto Rico, the "Foraker Act"** of April 12, 1900, c. 191, 31 Stat. 77 *et seq.*, provided:

Sec. 27. That all local legislative powers hereby granted shall be vested in a legislative assembly * * * designated "The legislative assembly of Porto Rico".

Sec. 32. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including * * * the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof.

Sec. 33. That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of General Orders, Numbered One hundred and eighteen, as promulgated by Brigadier-General Davis, United States Volunteers, August sixteenth, eighteen hundred and ninety-nine, and including also the police courts established by General Orders, Numbered One hundred and ninety-five promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier-General Davis, United States Volunteers, and the laws and ordinances of Porto Rico and the munici-

palities thereof in force, so far as the same are not in conflict herewith, all which courts and tribunals are hereby continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attaches thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said General Orders, Numbered One hundred and eighteen, and One hundred and ninety-five, until otherwise provided by law: *Provided, however*, That the chief justice and associate justices of the supreme court and the marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts shall be appointed by the governor, by and with the advice and consent of the executive council, and all other officials and attaches of all the other courts shall be chosen as may be directed by the legislative assembly, which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attaches for each, their jurisdiction, their procedure, and all other matters affecting them.

(2) **General Orders, No. 118, as promulgated by Brigadier-General Davis, Military Governor of Puerto Rico,** August 16, 1899, provided:

General Orders,
No. 118.

Headquarters Department of Porto Rico.
San Juan, August 16, 1899.

Upon the recommendation of the Judicial Board, the following reorganization and functions of the Judiciary of this Island were approved on August 10th, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the Courts of Justice of this Island will, from the 10th inst. undergo reforms in accordance with the following dispositions:

2. There shall be a Supreme Court of Justice with

fixed residence in the city of San Juan, composed of a Chief Justice and four Associate Justices who jointly will constitute a Judicial Bench for all civil and criminal business; the court shall also have a prosecuting attorney, one Secretary, two court clerks, one file clerk and taxer of costs, six clerks, one janitor and two Bailiffs.

3. The island is divided into five judicial Districts * * * *.

By command of Brigadier-General Davis:

W. P. Hall,
Adjutant General.

(3) **Section 3 of Joint Resolution No. 23, approved May 1, 1900,** provides in pertinent part (31 Stat. 715, 716; 48 U. S. Code):

Sec. 3. * * * **No corporation shall** be authorized to conduct the business of buying and selling real estate or **be permitted** to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and **every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land;** and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable. (*Emphasis supplied*)

(4) **The present Organic Act for Puerto Rico, the "Jones Law",** Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*, provides:

Sec. 2. That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. * * * *

That no law impairing the obligation of contracts shall be enacted. * * * *

That no *ex post facto* law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law. * * * *

Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws.

Sec. 23. That the Governor of Puerto Rico, within sixty days after the end of each session of the Legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn transmit the same to the Congress of the United States, copies of all laws enacted during the session.

Sec. 25. That all local legislative powers in Puerto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "The Legislature of Puerto Rico".

Sec. 34. That * * *. All laws enacted by the Legislature of Puerto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same. * * * *

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power

to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof, in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

Sec. 39 [2d Par.] That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Puerto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.

Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attachés thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That the Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico.

Sec. 57. That the laws and ordinances of Puerto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Puerto Rico or by Act of

Congress of the United States; and such legislative authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit.

PUERTO RICO:

(1) **The "Act Establishing *Quo Warranto* Proceedings"**, approved March 1, 1902 ("Rev. Stats. and Codes of Porto Rico", 1902, Pars. 779-787, pp. 282-284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319-1327, pp. 268-269), **as originally enacted,** provided in pertinent part:

> Sec. 2. [Par. 780, Rev. of 1902; Par. 1320, Rev. of 1911]. That in case * * * any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or exercises rights not conferred by law: The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of "Quo Warranto" in the name of the People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.
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> Sec. 6. [Par. 784, Rev. of 1902; Par. 1324, Rev. of 1911]. In case any person or corporation against whom any such petition is filed, or adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise,[25] and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: *Provided*, that instead of judgment of ouster from a

[25] The "Rev. Stats. and Codes" of 1902 (Par. 784, p. 283, last line at the bottom of the page) says "is" [its] "franchise".

franchise, the court may fine the person or corporation found guilty in any sum not exceeding five thousand dollars for each offense.[26]

(2) **"An Act Establishing The Supreme Court Of Porto Rico As a Court Of Appeals"**, approved March 12, 1903 (Laws of 1903, p. 59; Comp. of Rev. Stats. and Codes of 1911, Par. 1141, p. 241) provides in pertinent part:

> Section 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. In its deliberations and decisions, in all cases, civil or criminal, said court shall not be confined to the errors in proceeding (procedure) or of law only, as they are pointed out, alleged or saved by the respective parties to the suit, or as set fourth (forth) in their briefs and exceptions, but in furtherance of justice, the court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right and to prevent injustice and delay.
>
> Section 2.—All the Sections of the Law of Civil Procedure establishing proceedings for appeals on cassation are hereby repealed.

(3) **"An Act To Confer Original Jurisdiction On The Supreme Court Of Porto Rico For The Trial And Adjudication Of Certain Property Claimed By The Roman Catholic Church in Porto Rico"**, approved March 10, 1904 (Laws of 1904, pp. 134-135) provided in pertinent part:

> Section 1.—Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing,

[26] By Act No. 37, April 24, 1931 (Laws of 1931, pp. 354-356), Section 6 was amended by inserting a second *proviso* requiring any defendant against whom a judgment has been rendered declaring him "to have usurped any public office or to be unlawfully performing the duties thereof", "immediately" to "retire from said office and cease performing the duties thereof."

or which may arise, between the Roman Catholic Church in Porto Rico and the People of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

Section 3.—The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive and hear testimony, and the procedure in said court shall be the same, as near as may be, as that prescribed for the District Courts of Porto Rico in civil cases, and the Supreme Court shall have full power to enter any and all orders and decrees that may be necessary to a final and full adjudication . . . .

Section 5.—Original jurisdiction is hereby also conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and any municipality of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

[MEMO.—The validity of this Act of March 10, 1904, conferring original jurisdiction on the insular Supreme Court for the purposes designated in the Act, was sustained by the United States Supreme Court in *Ponce vs. Roman Catholic Apostolic Church*, 210 U. S. 296, 303-308].

(4) Act No. 30, **An Act to establish a law of private corporations,** approved March 9, 1911; Pars. 407, *et. seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89-90 [Revision and substantial reenactment of "An Act Regarding Corporations", Laws of 1902, pp. 258 *et seq.*; Rev. Stats. and Codes of 1902, Civil Code, Title II, Secs. 32 *et seq.*, pp. 759 *et seq.*]

Article I. *Organization of corporations and revocation of incorporation.*

Section 1. Private corporations may be organized by voluntary association of three or more persons, for the purposes and in the manner designated hereunder.

Sec. 2. The object or subjects of corporations organized under this act, may be:

1. The establishment of mercantile or industrial enterprises, which shall be operated and developed under all forms and within all licit combinations which human intelligence and activity may suggest or permit, without any other limitation than those imposed by the statutes of the United States and the laws of Porto Rico.

2. The establishment of building enterprises for the construction of public and private buildings.

Sec. 3. Every corporation has power.

1. To have succession by its corporate name in perpetuity or for the period mentioned in its articles of incorporation.

2. To sue or to be sued in any court.

3. To have and use a seal, which it may alter at will.

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: *Provided, however,* That the power of any agricultural corporation'' [The Act of 1902 reads ''any corporation'', omitting the word ''agricultural''. Rev. Stats. & Codes of 1902, *supra,* Civil Code, Sec. 32—(4), p. 759] ''organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.

5. To appoint the officers and agents required by the business of the corporation and to make them reasonable compensation.

6. To make by-laws as to the number of directors, as to the management, regulation and government of its property and affairs and the transfer of its stock subject to the provisions of this act.

7. To dissolve, either voluntarily or by operation of law and in accordance with the provisions of this act.

8. To possess and exercise, subject to the restrictions and liabilities contained in this act and in the

Civil Code and its articles of incorporation such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are not inappropriate to or inconsistent with such articles of incorporation or with the provisions of this act and of the Civil Code.

Sec. 4. No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any banking business in conflict with or opposition to the prescriptions of the statutes of the United States concerning banks.

Sec. 5. Any corporation organized under this Act may be dissolved at the pleasure of the Legislative Assembly who may also, at its pleasure, alter, suspend or repeal its articles of incorporation or any addition or amendment made to the same. Any amendment or repealing act hereafter enacted by the Legislative Assembly shall be binding upon the corporations organized under this act. Such amendment or repeal, however, shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred by it or them. This title and all amendments thereto shall be deemed a part of the charter of every corporation formed hereunder, except so far as the same are inappropriate and inapplicable to the object of such corporation.

Article II. Formation, Alteration and Dissolution of Corporations.

Sec. 6. Articles of Incorporation.—That on executing, acknowledging and filing articles of incorporation, in accordance with the next section of this act, three or more persons of full legal capacity may organize a corporation for any lawful purpose or purposes, and any such corporation may conduct a business in Porto Rico and the United States, or any foreign country, and may hold, acquire, mortgage and transfer real or personal property, or

maintain one or more offices outside of the Island of Porto Rico, provided such powers are included in the objects mentioned in the certificate of incorporation: *Provided, however,* That it shall not be lawful to organize under this chapter any bank, savings bank, building or loan association, or insurance company: *Provided, further; however*: That the charter of every railroad company, telegraph company, telephone company, canal company, electric light company, turnpike company, or any other company requiring the exercise of the right of eminent domain or any public-service corporation, shall be subject to amendment, alteration or repeal by the Legislative Assembly of Porto Rico; and the charters of such corporations shall expressly so provide; and all such corporations shall be subject to effective regulation, as now or hereafter made be provided by law.

The right and power to purchase, construct, lease and operate railroads, street railways, and the business of developing, transmitting and distributing electricity to the public and private consumers, and any other lawful business incident to, connected with, or which shall promote the main business of said corporation, may be included in one chapter.

Sec. 7. The articles of incorporation must be subscribed by each of the incorporators and must be acknowledged before a notary or other officer authorized to take and certify acknowledgements. They shall set forth:

1. The name of the corporation; but no name shall be assumed already in use by any other corporation, or so nearly similar thereto as to lead to confusion or uncertainty.

2. The location including the town or city, street and number, if there be any, of its principal office in the Island of Porto Rico.

3. The period, if any, limited for the duration of the corporation.

4. The object or objects for which the corporation is formed.

5. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided, and the par value of each share, and the amount of paid-in capital, with which it shall commence business, which shall not be less than one thousand dollars.

6. The names and post-office addresses of the incorporators and the number of shares subscribed for by each and the amount of their subscription paid in by each.

7. Any provisions which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation, or for creating, defining, limiting and regulating the powers of the corporation directors or of the stockholders, provided that such provision or provisions shall be consistent with this act.

(5) ***Acts Nos. 33 and 47; Special Session, 1935.***

Act No. 33, approved July 22, 1935, entitled

"An Act To Confer Upon The Supreme Court of Puerto Rico Exclusive Original Jurisdiction In *Quo Warranto* Proceedings That The Government Of Puerto Rico May Institute For Violations Of The Provisions Of Section 752, Title 48, United States Code, And For Other Purposes", copied in full in the Record here ("Exhibit No. 11", R. 239-240),

provides in pertinent part (Laws of 1935, Special Session, p. 418):

Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to

institute a proceeding of the nature of *Quo Warranto*.

Act No. 47, approved August 7, 1935, Laws of 1935, Special Session, pp. 530-536, copied in full in the Record here ("Exhibit No. 12", R. 240-243), **amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902** [*ante*, pp. 68-69; Sec. 6 already amended by the Act of 1931, Footnote 21, *ante*, p. 69, amendment concerning public offices, immaterial here], so as to read in pertinent parts:

> Section 2.—In case any person should usurp, or unlawfully hold or execute any public office * * * *, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for" [leave to file][27] "an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for" [leave to file][27] "an information in the nature of *Quo Warranto* in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *
>
> Section 6.—In case any person or corporation against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against

[27] Spanish: "una solicitud para que se instruya información de la naturaleza del *quo warranto*".

such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; * * * *

Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property, and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

(6) **Code of Civil Procedure of Puerto Rico (Edition of 1933).**

Section 103.—(426 Cal.)[28] The complaint must contain:

1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

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[28] The references, here and in other sections of this Code, are to the sections of the California Code of Civil Procedure, upon which the Puerto Rico Code is modelled. See "Rule 1" of Act No. 6, approved March 31, 1933, "Establishing Rules for the Printing of the Code of Civil Procedure of Puerto Rico"; Laws of 1933, p. 194; *ante*, foot-note 15, p. 54.

2. A statement of the facts constituting the cause of action, in ordinary and concise language.

3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

Section 105.—(430 Cal.) The defendant may demur to the complaint within the time required in the summons to answer, when it appears on the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2. That the plaintiff has no legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

5. That several causes of action have been improperly united; or,

6. That the complaint does not state facts sufficient to constitute a cause of action; or,

7. That the complaint is ambiguous, unintelligible, or uncertain.

Section 109.—(434 Cal.) If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Section 110.—(437 Cal.) The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

2. A statement of any new matter constituting a defense or counterclaim. If the complaint is verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the de-

fendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

Section 122.—(453 Cal.) In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Section 132.—(462 Cal.) Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counterclaim, must, on the trial, be deemed controverted by the opposite party.

Section 133.—(463 Cal.) A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Section 142.—(475 Cal.) The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

Section 191.—(580 Cal.) The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.